TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1217.

EX PARTE: IN THE MATTER OF LEWIS BROWN, APPELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED SEPTEMBER 2, 1889.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1217.

EX PARTE: IN THE MATTER OF LEWIS BROWN, APPELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

INDEX.

	Original.	Print.
Caption	1	1
Petition for writ of *habeas corpus*	1	1
Order for writ of *habeas corpus*	4	2
Writ of *habeas corpus*	5	2
Marshal's return	6	3
Jailer's return	6	3
Exhibit A—Order of committal	8	4
Demurrer to return	9	4
Order refusing to discharge prisoner and allowing appeal	10	4
Appeal bond	11	5
Assignment of errors	13	6
Clerk's certificate	14	6

JUDD & DETWEILER, PRINTERS, WASHINGTON, SEPTEMBER 3, 1889.

1 In the Circuit Court of the United States for the Eastern District of Virginia, at Richmond, July 3d, 1889.

In the Matter of *ex parte* LEWIS BROWN.

On petition for the writ of *habeas corpus.*

Be it remembered that on this day, to wit, the 3d July, came Lewis Brown, by counsel, and presented to the court his petition for a writ of *habeas corpus;* which petition is as follows:

Petition.

Circuit Court of the United States for the Eastern District of Virginia.

In the Matter of *ex parte* LEWIS BROWN. No. 58.

To the honorable circuit court of the United States for the eastern district of Virginia:

Your petitioner, Lewis Brown, would respectfully represent that in the month of July, 1889, he was sentenced by the hustings court of the city of Richmond to pay a fine of twenty-five dollars
2 and the costs thereof, amounting to $26.70, and to remain in the jail of the said city until the same should be paid, in the custody of R. A. Carter, who is the sergeant of said city and, in virtue of his said office as sergeant, jailer thereof; that on the 3d day of July, 1889, your petitioner tendered W. P. Lawton, who is clerk of the said hustings court, in payment of his said fine, eighteen ($18.00) dollars in coupons and 8.70 dollars in lawful money of the United States; that each one of said coupons so tendered was cut from a bond issued by the State of Virginia under the provisions of her act of Assembly approved March 30th, 1871, entitled "An act to provide for the funding and payment of the public debt," and each one was overdue and past maturity, and each one became so overdue prior to July 1, 1888, and each one bore upon its face the contract of the State of Virginia that it should be receivable in payment of all taxes, dues, and demands due to said State; that said clerk refused to receive said coupons and money in payment of said fine and costs because certain acts of the General
3 Assembly of Virginia, hereafter more generally referred to, forbade him so to receive him; that thereafter, on the same day, he tendered the same coupons and current money to R. A. Carter, sergeant as aforesaid, and demanded his release from his custody; that said sergeant also refused to receive said coupons and money in payment of said fine and costs, and he refused to receive the same because the coupons so tendered by your petitioner became due prior to the first day of July, 1888, and because section 415 of the Code of Virginia of 1887 prohibits the receipt of any coupons of said State which became due prior to July 1, 1888, as

those tendered by petitioner did; that said section 415 of said code is repugnant to the Constitution of the United States, and your petitioner is therefore detained in said jail and in custody of said sergeant in violation of the Constitution of the United States.

Your petitioner therefore prays that this honorable court will award to him the writ of *habeas corpus*, directed to said R. A. Carter, sergeant of the said city of Richmond, Virginia, and that he be discharged from his said unlawful custody.

his
LEWIS x BROWN.
mark.

Witness:
W. P. LEE.

4 UNITED STATES OF AMERICA, }
Eastern District of Virginia, } *ss:*

This day Lewis Brown personally appeared before me, McLain Pleasants, a U. S. commissioner for the district aforesaid, and made oath that the allegations of the foregoing petition are true.

Given under my hand this 3d day of July, 1889.

McLAIN PLEASANTS,
U. S. Comm'r, Ea. Dist. Va.

(Whereupon the following order was entered:)

Order to Issue Writ.

Circuit Court of the United States for the Eastern District of Virginia.

Issue the writ of *habeas corpus* as prayed in the within petition and make it returnable before the United States circuit court for the Eastern District of Virginia, at the court-house, in Richmond, forthwith.

3d July, 1889.

RO. W. HUGHES, *Judge.*

To the clerk of the circuit court of the United States for the eastern district of Virginia:

In accordance with the foregoing order the writ of *habeas corpus* was issued, which, with the return thereon, is as follows:

5 Circuit Court of the United States, Eastern District of Virginia, *ss:*

The President of the United States of America to R. A. Carter, sergeant of the city of Richmond, Virginia, Greeting:

We command you that the body of Lewis Brown, detained by you and under your custody, as it is said, by whatsoever name he may be called, together with the day and cause of his being taken and detained, you have forthwith before the Hon. Ro. W. Hughes, one of the judges of our circuit court of the United States for the eastern

district of Virginia, sitting at the court-room of said circuit court, in the city of Richmond, to do, submit to, and receive all and singular those things which shall then and there be considered of him in this behalf.

And have you then and there this writ.

Witness the Hon. M. R. Fuller, Chief Justice of the Su-
[SEAL.] preme Court of the United States, at Richmond, this 3d day of July, A. D. 1889.

M. F. PLEASANTS, *Clerk.*

6 *The Marshall's Return on the Foregoing Writ.*

RICHMOND, VA., *July 3d*, 1889.

Executed by delivering a true copy of within writ to R. A. Carter, sergeant, city of Richmond, this 3d day of July, A. D. 1889.

THOS. E. BALLARD,
Sp. Deputy U. S. M.

Return of R. A. Carter, sergeant of the city of Richmond, Virginia, to a writ of *habeas corpus* awarded by the circuit court of the United States for the eastern district of Virginia upon the petition of Lewis Brown.

Respondent, for a return to said writ, exhibits herewith a copy of a judgment and order of the hustings court of the city of Richmond committing the petitioner to the jail of the city of Richmond until he shall pay a certain fine and costs imposed upon him by said court, which order and judgment he marks "Exhibit A," and prays that it may be taken as a part of this return.

Respondent admits that on the 3d day of July, 1889, petitioner tendered the coupons and money set out and described in his
7 petition to W. P. Lawton, clerk of the said court, and the said Lawton refused to receive the same, for the reasons assigned by the petitioner. Respondent admits further that on the 3d day of July, 1889, petitioner did tender to him eight dollars and seventy cents ($8.70) in current money of the United States and eighteen ($18) dollars in papers, written, printed, engraved, or lithographed, purporting to be coupons detached from bonds of the State of Virginia; but respondent denies that they were genuine coupons, legally receivable for taxes, debts, and demands of the said State. By section 399 of the Code of Virginia of 1887 respondent is forbidden to receive said coupons out and out as payment, but by section 406 of said code he is directed to receive the said State's coupons when properly receivable for identification and verification; but by section 415 of said code it is provided that no petition shall be filed or other proceeding had to try whether any paper, printed, written, engraved, or lithographed, purporting to be a coupon detached from any bond of said State is a genuine coupon, legally receivable for taxes, debts, or demands of the said State, where said coupon
8 became due prior to July 1st, 1888, unless said petition was filed or proceeding had within one year from said July 1,

1888; and petitioner admits, as respondent charges the fact to be, that the coupons held by him became due prior to July 1, 1888. Respondent denies the genuineness of coupons tendered, and, as said last-mentioned section forbids petitioner to prove them genuine, respondent understands the statute law of the State of Virginia to forbid him to receive said coupons for any purpose, and he refused to receive them, and said clerk refused to receive them because the provisions of the Code of Virginia to which respondent has referred deny both him and the said clerk the right to receive them.

R. A. CARTER, *Serg't*,
By I. M. MASON, *D. S.*

EXHIBIT "A." Attached to the foregoing return of R. A. Carter, serg't.

In the Hustings Court of the City of Richmond.

JULY 2D, 1889.

Lewis Brown, against whom an attachment was awarded on the 11th day of June, 1889, to show cause why he should not be attached for his contempt for failing to attend this court at the June
9 term, 1889, as a witness for the Commonwealth against Julius Klueber, charged with a misdemeanor, and who was, on the 15th day of June, 1889, recognized to appear before this court on the 2d day of July, 1889, this day appeared and, according to his recognizance, *and* answered on oath as to his said contempt; whereupon the court doth impose upon the said Lewis Brown a fine of twenty-five dollars for his said contempt, and, the said Lewis Brown failing to pay the said fine, it is ordered that he be committed to the jail of this city, therein to be confined until the said fine be paid or he be otherwise discharged by order of this court.

A copy.

Teste: W. P. LAWTON, *Clerk.*

Whereupon the petitioner filed his demurrer to the return of R. A. Carter, serg't of the city of Richmond; which demurrer is as follows:

Circuit Court of the United States, Eastern District of Virginia.

Ex parte: In the Matter of LEWIS BROWN. No. 58.

The petitioner demurs to the return of the sergeant of the
10 city of Richmond to the writ of *habeas corpus* heretofore awarded him, and assigns as his reason therefor that section 415 of the Code of Virginia of 1887 is repugnant to the Constitution of the United States.

PETITIONER,
By his attorney, WM. L. ROYALL.

The following order was then entered:

Circuit Court of the United States for the Eastern District of Virginia.

Ex parte: In the Matter of LEWIS BROWN. No. 58.

The court, having read and considered the petition for a writ of *habeas corpus*, the return thereto of the sergeant of the city of Richmond, and the demurrer thereto of the petitioner, is of opinion that the question raised thereby is whether section 415 of the Code of Virginia of 1887 is or is not repugnant to the Constitution of the United States, and, this being a question of great importance, the court is of opinion that it should be decided, in the first place, by the Supreme Court of the United States. The court therefore de-
nies said petition and refuses to discharge said petitioner from
11 custody, but upon his prayer therefor in open court it allows
him an appeal from this order to the Supreme Court of the United States upon his or some one for him entering into a bond, in the penalty of $200, conditioned to pay all costs of said appeal if he fail to make the same good; and in the meantime the court admits the petitioner to bail in the sum of $200, his bail bond to be conditioned that he appear before this court whenever notified to do so, to abide by such judgment as said Supreme Court of the United States may render upon his said appeal.

July 3d, 1889.

RO. W. HUGHES, *Judge.*

Appeal Bond.

Circuit Court of the United States of America, Eastern District of Virginia.

Ex parte LEWIS BROWN.

Know all men by these presents that we, Lewis Brown and Wm. L. Royall, are held and firmly bound unto the United States of
America in the sum of two hundred dollars, to be paid to the
12 said United States; to which payment, well and truly to be
made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 3d day of July, A. D. 1889.

Whereas the above-named Lewis Brown hath prosecuted an appeal in *habeas corpus* to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled cause by the circuit court of the United States for the eastern district of Virginia:

Now, therefore, the condition of this obligation is such that if the above-named Lewis Brown shall prosecute said appeal to affect and answer all damages and costs if he shall fail to make good his

plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

his
LEWIS x BROWN. [SEAL.]
mark.
WM. L. ROYALL. [SEAL.]

Sealed and delivered in the presence of—
McLAIN PLEASANTS, *Dep. Clerk.*

13 Circuit Court of the United States for the Eastern District of Virginia.

Ex parte LEWIS BROWN.

Assignment of Errors.

Appellant assigns for error the action of the circuit court in denying his petition and refusing to discharge him from custody.

APPELLANT,
By his attorney, WM. L. ROYALL.

14 UNITED STATES OF AMERICA, }
Eastern District of Virginia, } *ss:*

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings in the cause in the caption hereof mentioned.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at Richmond, in said district, this 13th day of July, 1889.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS, *Clerk.*

Endorsed on cover: E. Virginia C. C. U. S. No. 1217. *Ex parte:* In the matter of Lewis Brown, appellant. Filed September 2, 1889.

135-662-713

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1268. ~~843~~ ~~504~~ 823

GEORGE S. VASHON, PLAINTIFF IN ERROR,

vs

SAMUEL C. GREENHOW, TREASURER OF THE CITY OF RICHMOND, VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED FEBRUARY 23, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1268.

GEORGE S. VASHON, PLAINTIFF IN ERROR,

vs

SAMUEL C. GREENHOW, TREASURER OF THE CITY OF RICHMOND, VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

INDEX.

	Original.	Print.
Caption	1	1
Petition for writ of error	1	1
Transcript from Hustings county	8	3
Caption	8	3
Petition	8	4
Rule to show cause	13	4
Answer	15	6
Order for mandamus	18	7
Exhibit "C. M. R." to answer—Tax bill	20	8
Submission	20	8
Judgment	21	9
Opinion	23	9
Clerk's certificate	51	20
Writ of error	53	21
Citation	56	22
Proof of service of citation	57	22
Bond	58	22
Assignment of errors	60	23
Petition for writ of error	61	24

JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 VIRGINIA:

Pleas before the supreme court of appeals of Virginia, held at the State court-house, in the city of Richmond, on Tuesday, the 11th of February, 1886.

Be it remembered that heretofore, to wit, at a supreme court of appeals held at the the State court-house, in the city of Richmond, on Tuesday, December 2d, 1884, upon the petition of S. C. Greenhow, treasurer of the city of Richmond, a writ of error and supersedeas is awarded him to a judgment rendered by the hustings court of the city of Richmond on the 15th day of November, 1884, upon a petition for a writ of mandamus, in which George S. Vashon was plaintiff and the petitioner was defendant. No bond [was] required.

Which petition, with the transcript of the record accompanying the same, is as follows:

Petition.

To the honorable judges of the supreme court of appeals of Virginia:

The petition of S. C. Greenhow, State treasurer for the city of Richmond, respectfully represents that he is aggrieved by a final
2 judgment of the hustings court of the city of Richmond, rendered on the 15 day of November, 1884, upon a rule awarded upon a petition for a writ of mandamus filed in the said hustings court by G. S. Vashon.

A transcript of the record is herewith presented, by which it will be perceived that the case is as follows:

On November —, 1884, G. S. Vashon, at the time he offered to pay his State taxes, tendered your petitioner coupons of the face value of $33 in payment of so much of said taxes, and to be forwarded to the said hustings court for verification. Your petitioner agreed to accept the money, but refused to accept the coupons, and particularly so much of said coupons as were offered in payment of that portion of the said taxes as were set aside for the maintenance of the public free schools by the constitution and laws of this State. That portion amounted to $9.66, but the said Vashon refused to pay in money unless the coupons were accepted by your petitioner and forwarded to the hustings court.

Upon this refusal the said Vashon obtained a rule from
3 said hustings court requiring your petitioner to show cause.

Your petitioner demurred to the petition in the lower court, and the said Vashon, by counsel, demurred to the answer of your petitioner. The court overruled the demurrer to the petition in the lower court and sustained the demurrer to the answer.

Your petitioner insists that the court erred in overruling his demurrer and in sustaining the demurrer to the answer.

The right of this honorable court to entertain jurisdiction of this proceeding cannot now be questioned.

Acts of 1881–'2, p. 12; acts of 1883–'4, p. 504; Taylor act; Treas. *v.* Williams, 8 Va. Law Journal, p. 216.

The reasons justifying your petitioner in refusing to accept said coupons cannot better be stated than in the very terms of the law.

Section 8 of article VIII of the constitution of Virginia expressly provides "that the General Assembly shall apply the annual interest on the literary fund, and an annual tax upon the property of the State of not less than one mill nor more than five mills on the dollar for public free-school purposes."

4 The last General Assembly, in pursance of this constitutional power, has passed a law, two of the sections of which are intended to prescribe the manner in which this provision in the constitution is to be carried out. Acts of 1883–'4, chapter 450, section 2, page 561; *Id.*, chapter 450, section 113.

Section 2 of chapter 450 provides that "on tracts of land and lots there shall be a tax of ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of the State."

Section 113 of chapter 450 provides that "all taxes assessed on property, real or personal, by this act, and by it dedicated to the maintenance of public free schools of the State, shall be paid and collected only in lawful money of the United States, and shall be paid into the treasury to the credit of the free-school fund, and shall be used for no other purpose whatsoever."

Requiring this tax dedicated to free schools to be paid in money was but following the aforesaid provision of the constitution.

5 That constitution created this fund into a trust fund for the benefit of the free schools.

To accept a tender of coupons in payment of this tax, after proof of their genuineness, to pay back the money so dedicated by the constitution, would be a breach of trust on the part of the Legislature. To say that the State has made a contract, however, to accept these coupons in payment of taxes is no answer or defence of this breach of trust. The statute creating these evidences of indebtedness was passed by a Legislature acting under the constitution of the State. Any law that that Legislature might pass in contravention of that constitution is undoubtedly null and void. A contract that undertakes to divert the fund set aside by the constitution for the maintenance of the public schools to the payment of these coupons is no contract at all. It is simply unconstitutional, null, and void. The treasurer of the city of Richmond, then, was justified not only by the legislative enactments, but also by an express constitutional provision in refusing to receive so many of Vashon's coupons as were offered in payment of that portion of

6 the tax dedicated to the maintenance of the public free schools.

It is true that there have been decisions of the supreme court of this State apparently in opposition to the view here expressed. They extend from Antoni *v.* Wright, 22 Grattan, to Williamson *v.* Massey, auditor, 33 Grattan. But since those decisions the Legislature has seen fit to enact this statute. It is evident, then, that this co-ordinate branch of the government desires again to have the views of the judiciary upon this question involving such grave interests. The courteous deference which this branch of the

government has always shown to the wishes of the Legislature will, we believe, cause this honorable court to grant a hearing to your petitioner upon this most important of public questions.

Again, in those cases, this question was merely auxiliary, if not secondary, to the other points involved. Here it is the sole question raised in the record.

In Antoni *v.* Wright, 22 Grattan, the question was whether a statute providing that no taxes could be paid in coupons —. This statute was held to be unconstitutional. This is not the ques-
7 tion involved in this case. Here the Legislature has sought to carry out the provisions of the constitution saying that a certain portion (not less than one mill nor more than five) shall be inviolably set apart for the maintenance of the public free schools. In carrying out this provision of the constitution they have required the collectors of State taxes to prepare their books with reference to the separate collection of this school tax, and to pay said tax into the treasury to the credit of the free school fund. Acts 1883, '4, page 603.

Nor, as late as the case of Williamson *v.* Massey, auditor, 33 Grattan, had the Legislature passed enactments intended solely to carry out those sections of the eighth article of the constitution. And for these said errors your petitioner prays a writ of error and supersedeas to the judgment aforesaid.

S. C. GREENHOW,
State Treasurer of the City of Richmond.
By WYNDHAM R. MEREDITH,
His Counsel.

I, an attorney, practising in the supreme court of appeals
8 of Virginia, am of opinion that there is error in the judgment of the court below, and that the same should be reviewed.

December 1, 1884.

WYNDHAM R. MEREDITH.

Writ of error and supersedeas awarded.
No bond required.

B. W. LACY.

To the clerk of the supreme court of appeals at Richmond, Va.

Transcript of Record.

STATE OF VIRGINIA, } *To wit:*
City of Richmond, }

Pleas at the court-house of the city of Richmond, before the hustings court of the said city, on the 15th day of November, 1884.

Be it remembered that heretofore, to wit, at a hustings court held for the said city, at the court-house, on the 13th day of November, 1884, came George S. Vashon, by his attorneys, Messrs. Sands &

Bryan and Richard L. Maury, and filed his petition, which is in the words and figures following, to wit:

"Hon. Thos. S. Atkins, judge of the hustings court of the city of Richmond:

"Your petitioner, George S. Vashon, respectfully represents unto your honor that he is a tax-payer of the city of Richmond,
9 and that on the 12th day of November, 1884, he was indebted to the State of Virginia for State taxes, 1884, to the amount of $35.63, and that being so indebted on said day he tendered S. C. Greenhow, the treasurer of said city and the officer appointed by law to receive said tax, in payment thereof, certain coupons cut from bonds of the State of Virginia issued under the act of the General Assembly approved March 31st, 1871, entitled 'An act to provide for the funding and payment of the public debt,' one for one thousand dollars, No. 3174, and one for one hundred dollars, No. 1279. Said coupons being of the denomination of $30 and of $3, which said coupons are past due and are to the court here shown."

Your petitioner at the same time offered to pay said treasurer his said tax in legal-tender notes and coin, and demanded that the said treasurer receive said coupons along with said legal-tender notes and coin, for the purpose of identification and verification, in manner and form as required by an act of the General Assembly, approved January 14th, 1882, and entitled "An act to prevent frauds upon the Commonwealth and holders of her securities in the collection and disbursement of revenue." Your petitioner shows that the following words are engraved and stamped on said coupons:

Face:

"Receivable at and after maturity for all taxes, debts, and
10 demands due the State." "The Commonwealth of Virginia will pay the bearer thirty dollars. Interest due 1st Jan'y, 1883, on bond No. 3174. Geo. Rye, treasurer of the Commonwealth of Virginia." Coupon No. 23. "National Bank Note Co., New York."

Reverse:

"Receivable at and after maturity for all taxes, debts, and (23) demands due the State. National Bank Note Company, New York."

On the $3 coupon mentioned the same words are used, except the amount, which is $3, and the number of the bond from which it was cut being 1279, and the number of the coupon, which is No. 25. The reverse side of coupon is the same, except the words "National Bank [Note] Co., New York" are omitted.

Your petitioner further alleges that by virtue of the State's contract to receive said coupons in payment of his taxes, and by virtue of the provisions of the act of the General Assembly as aforesaid, he is entitled, upon the payment of his said tax in money as afore-

said, to have his said coupons received for identification and
11 verification and pay his tax therewith, and that he is aggrieved by the refusal of said treasurer to so receive them; wherefore he prays that the Commonwealth's writ of mandamus do issue, commanding said Greenhow, treasurer of said city, to receive the said money, and also the said coupons, commanding him to forward said coupons to this court for identification and verification, according to law.

GEO. S. VASHON,
By counsel, MAURY & SANDS, *P. G.*

Geo. S. Vashon, Jr., this day personally appeared before me and made oath that the statements contained in the foregoing petition are true.

WALTER CHRISTIAN, *N. P.*

12 Upon consideration whereof it was ordered that Samuel C. Greenhow, treasurer of the city, appear before this court on Saturday, the 15th day of November, 1884, to show cause, if any he can, why the Commonwealth's writ of mandamus should not be awarded the said petitioner, compelling him, the said treasurer, to receive the money, and also the coupons mentioned and described in the said petition, in payment of the taxes due by said petitioner to the Commonwealth, and to forward said coupons to this court for identification and verification.

And now, at this day, to wit, at the same hustings court, continued by adjournment, and held for the said city, on the 15th day of November, 1884 (being the same day and year first herein written), came again as well the petitioner, by his counsel, as Wyndham R. Meredith, acting attorney for the Commonwealth on behalf of the respondent, and the respondent entered a general demurrer to the petition herein, and the petitioner joined in the said demurrer, and
the matters of law arising upon the said demurrer being ar-
13 gued by counsel the said demurrer was overruled by the court. The respondent thereupon filed his answer to the said petition and rule awarded herein, which rule and answer are in the words and figures following, to wit:

"In the hustings court of the city of Richmond, November 13th, 1884, upon the petition of George S. Vashon, this day filed, alleging that as a tax-payer of the city of Richmond he is indebted to the Commonwealth of Virginia for taxes for the year 1884 — the sum of thirty-five dollars and sixty-three cents, in payment of which tax he, on the 12th day of November, 1884, tendered to S. C. Greenhow, treasurer of the city of Richmond, two coupons cut from bonds of the Commonwealth issued under the act of the General Assembly approved March 31st, 1871, entitled An act to provide for the funding and payment of the public debt, one for one thousand dollars, numbered 3174, and one for one hundred dollars, numbered 1279, said coupons being of the denomination of $30.00 and of $3, and are past due, and fully described in said petition; and that at the time of the tender of the said coupons he also offered to pay said treasurer his

said taxes in money, and demanded that the treasurer receive
14 said coupons along with the amount of said tax in money for the purposes of identification and verification; and that by virtue of the State's contract to receive said coupons in payment of his taxes, and by virtue of the provisions of the act of the General Assembly aforesaid, he is entitled upon the payment of his said taxes in money to have his said coupons received for identification and verification and pay his said taxes therewith, and that he is aggrieved by the refusal of the said treasurer to receive said coupons, and praying that the Commonwealth's writ of mandamus be awarded him to compel the said treasurer to receive the said money and also the said coupons, and to forward said coupons to this court for identification and verification. Upon consideration whereof it is ordered that Samuel C. Greenhow, treasurer of this city, appear before this court on Saturday, the 15th day of November, 1884, to show cause, if any he can, why the Commonwealth's writ of mandamus should not be awarded the said petitioner, compelling him, the said treasurer, to receive the money and also the coupons mentioned
15 and described in the said petition in payment of the taxes due by said petitioner to the Commonwealth, and to forward said coupons to this court for identification and verification.

"A copy.

"Teste: W. P. LAWTON, *Clk.*

"*Returned.*

"Executed Nov. 14, '84, on Samuel C. Greenhow, treasurer of the city of Richmond, by delivering to him a true copy of the within, and summoning him to appear & answer at the time and place herein mentioned.

"I. LOWENSTEIN, *Dep. S'g't.*

"*Answer.*

"The answer of S. C. Greenhow, State treasurer for the city of Richmond, to the petition of G. S. Vashon, praying for a writ of mandamus filed in the hustings court of the city of Richmond, and to the rule awarded therein summoning him to appear and show cause why said writ should not issue requiring him to receive from the said G. S. Vashon the coupons and money mentioned in the said petition in payment of the taxes due the State of Virginia mentioned in the said petition, and to forward the said coupons to this court for identification and verification.

16 This respondent, for answer to said petition, any by way of showing cause against the granting of the mandamus prayed for, saith that it is true that the said G. S Vashon is indebted to the State of Virginia for taxes for the year 1884 as follows, to wit: for tax on property, the sum of $35.63, being $9.66 for the maintenance of the public free schools, as per "Exhibit C. M. R." herewith filed and prayed to be taken as part of this answer.

It is true that the said petitioner offered to pay the said tax in money at the same time that he demanded that your respondent

receive the coupons mentioned in petition & for the purposes of identification and verification.

Your respondent avers that he was willing to receive the payment of said tax in money, but refused to receive and receipt for so much of the coupons as were offered in payment of that portion of the tax set aside by law and dedicated to the maintenance of the public free schools of the State.

Your respondent assigns the following reasons for such refusal:

(1.) The constitution of Virginia provides, in section 7 of
17 article VIII, what specific sums shall be set apart as a permanent and perpetual literary fund, and includes in it such other sums as the General Assembly may appropriate.

(2.) Section 8 of the same article provides that the General Assembly shall apply the annual interest on the literary fund and an annual tax upon the property of the State of not less than one mill nor more than five mills on the dollar for the benefit of the public free schools.

(3.) In pursuance of this constitutional authority the General Assembly has provided, in acts of 1883–'4, p. 561, that on tracts of lands and lots a tax of ten cents on every hundred dollars of the assessed value thereof shall be levied, which shall be applied to the support of the public free schools of the State.

(4.) Again, the last General Assembly, in acts of 1883–'4, p. 603, have provided that all taxes assessed on property, real or personal, and dedicated to the maintenance of the public free schools of the State, shall be paid and collected only in lawful money of the United States, and shall be paid into the treasury to the
18 credit of the free school fund, and shall be used for no other purpose whatsover.

Your respondent avers that to have forwarded such of the coupons as were offered in payment of the tax dedicated to the public free schools would have been a violation of the constitution and the laws above referred to.

For these reasons your respondent insists that he ought not to have forwarded, for the purpose of identification and verification, so much of the coupons as were tendered in payment of that portion of the tax dedicated to the public free schools.

He therefore prays that the writ of mandamus may be denied and the petition dismissed with costs.

S. C. GREENHOW,
By Counsel.

Affidavit waived.

MAURY [&] SANDS,
For Petitioner.

To which answer the petitioner entered a general demurrer and respondent joined in the said demurrer, and the cause being then fully argued on said petition, rule, answer, & demurrer to the answer, it seems to the court that the answer of the respondent
19 is not sufficient in law to prevent the petitioner from having his writ of mandamus as prayed for in his petition.

Wherefore it is considered by the court that the Commonwealth's writ of peremptory mandamus be awarded the petitioner, commanding the respondent to receive the money mentioned in the said petition, to wit, the sum of thirty-five dollars & sixty-three cents, in payment of the taxes due the Commonwealth by the said petitioner, together with the coupons named in said petition, to wit, the one coupon for $30 and numbered 3174, and the one coupon for $3, numbered 1279, said coupons being coupons cut from bonds of the Commonwealth, issued under the act of General Assembly, approved March 31, 1871, entitled An act to provide for the funding and payment of the public debt, and to forward the said coupons to this court for identification and verification according to law.

And it is further considered by the court that the petitioner recover against the said Samuel C. Greenhow, treasurer of this city, his costs by him in this behalf expended.

20 The following is a copy of Exhibit "C. M. R.," referred to in the foregoing answer to the petitio n l y th e resondent:

("EXHIBIT C. M. R.")

See that all your property is on the bill.

Geo. S. Vashon to the State of Virginia. for State Taxes in the City of Richmond, DR.

1884.

	Feet.	Street.	Value.	Gov. tax.	School tax.	Total.
Tax on No. ——	25	———	$2,125	6 38	2 13	
Do. 42, 43, 44	45	Holly, n'r Pine	1,500	4 50	1 50	
Do. 26	22	Market	3,100	9 30	3 10	
Do. 668	18	3d street	1,610	4 83	1 61	
Do. ——						
1 male, $1; value personal property, $320; cap't'l, $ ——; income, $ ——; 5 per cent.			———	25 01	8 34	33 35
				96	1 32	2 28
				25 97	9 66	35 63

Received payment.
Transcript from the record.
Teste: W. P. LAWTON, *Clerk.*

[Endorsed across the face in red ink:] Duplicate. C. M. Ragland, A. T.

At another day, to wit, at a supreme court of appeals held at the State court-house, in the city of Richmond, on Thursday, January 15, 1885, this cause is this day fully heard upon the transcript of the judgment aforesaid and the arguments of counsel, but the

court here is not yet advised of its judgment to be rendered in the premises. Time is taken to consider thereof.

21 And now at this day, to wit, Thursday, the 11th day of February, 1886 (being the day and year first herein mentioned), came again the parties, by their counsel, and the court having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel is of opinion, for reasons stated in writing and filed with the record, that the said judgment of the hustings court of the city of Richmond is erroneous; therefore it is considered by the court that the same be reversed and annulled, and that the plaintiff in error recover against the defendant in error his costs by him expended in the prosecution of his writ of error and supersedeas here.

And, this court proceeding to render such judgment as the said hustings court ought to have rendered, it is further considered that the petition of the plaintiff in the said hustings court be dismissed, the rule *nisi* awarded be discharged, and that the plaintiff, George S. Vashon, pay to the defendant his costs by him about his defence in said hustings court expended.

And at the instance of the counsel for the defendant in error the court certifies that in the record and at the hearing of this

22 cause there was drawn in question the validity of sections two and one hundred and thirteen of the act of the General Assembly of Virginia, approved March 15th, 1884, entitled "An act to provide for the assessment of taxes on persons, property, and incomes, and imposing taxes thereon for the support of government and public free schools, and to pay the interest on the public debt, and to provide for the mode of applying for licenses to transact any business in this State, and prescribing the amount to be paid as a condition precedent to the right to transact such business," which is chapter four hundred and fifty of the acts of 1883–1884, upon the ground that said sections two and one hundred and thirteen are repugnant to section ten of article one of the Constitution of the United States, and that the decision and judgment of the court is in favor of the validity of said sections and against the right claimed by the defendant in error under said section & article of the Constitution of the United States.

Which is ordered to be certified to said hustings court of the city of Richmond.

Which opinion is in the words and figures following, to wit:

23 *Opinion.*

GREENHOW, Treasurer, *vs.* VASHON.

RICHMOND, *Jan'y 14th*, 1886.

RICHARDSON, *J.*:

The defendant in error, George S. Vashon, a tax-payer in the city of Richmond, being indebted to the State of Virginia for State taxes for the year 1884 to the amount of $35.63, on the 12th day of November of that year tendered to S. C. Greenhow, the treasurer of

said city and the officer appointed by law to receive said tax, in payment thereof, certain coupons cut from bonds of the State of Virginia issued under the act of the General Assembly approved March 31st, 1871, entitled "An act to provide for the funding and payment of the public debt," one for one thousand dollars, No. 3174, and one for one hundred dollars, No. 1279, said coupons being of the denomination of $30.00 and of $3.00, which coupons were then past due, according to the stipulated time of payment mentioned on the face thereof. At the same time the said Vashon offered to pay said treasurer said tax in legal-tender notes and coin, and demanded that said treasurer receive said coupons along with said legal-tender notes and coin for the purpose of identification and verification in manner and form as required by an act of the General Assembly approved January 14th, 1882, entitled "An act to prevent frauds upon the Commonwealth and holders of her securities in the collection and disbursement of revenue.

The treasurer offered to accept the money in discharge of said taxes, but refused to accept the coupons, and particularly so much thereof as were offered in payment of such portion of said taxes as was set apart by the constitution and laws of this State for the support and maintenance of the public free schools of this Commonwealth. But Vashon refused to pay in money unless the coupons were accepted and forwarded by the said treasurer to said hustings court for verification, as aforesaid and thereupon obtained from said court a rule *nisi* against said treasurer requiring him to appear and shew cause, if any he could, why a mandamus should not issue compelling him to receive the coupons tendered as aforesaid.

The treasurer demurred to Vashon's petition, but the court overruled the demurrer, and he then answered, setting forth his reasons for refusing to receive said coupons, which answer is as follows:

1st. That the constitution of Virginia provides in section 7, article 8, what specific sums shall be set apart as a permanent and perpetual literary fund, and includes such other sums as the General Assembly may appropriate.

2d. That section 8 of same article provides that the General Assembly shall apply the annual interest on the literary fund and an annual tax on the property of the State of not less than one mill nor more than five mills on the dollar for the benefit of the public free schools.

3rd. That in pursuance of this constitutional authority the General Assembly has provided in acts of 1883–4, p. 561, that on tracts of lands and lots a tax of ten cents on every hundred dollars of the assessed value thereof shall be levied, which shall be applied to the support of the public free schools of the State.

4th. Again, the last General Assembly, in acts of 1883–4, p. 653, have provided that all taxes assessed on property, real or personal, and dedicated to the maintenance of the public free schools of the State, shall be paid and collected only in lawful money of the United States, and shall be paid into the treasury to the credit of the free school fund, and shall be used for no other purpose whatsover; and the respondent averred that to have forwarded such

of the coupons as were offered in the payment of the tax dedicated to the public free schools would have been a violation of the constitution and laws above referred to.

To this answer the petitioner, Vashon, demurred, and the petitioner joined therein, and there being no controversy as to the facts at the hearing the said hustings court sustained the demurrer and awarded a peremptory mandamus requiring the said treasurer to receive the money mentioned in the petition, to wit, $35.63, in payment of the taxes, together with the coupons mentioned therein, and to forward the coupons to the court for verification according to law.

The ticket for the taxes against Vashon represented that there was due the Commonwealth from him, for the year 1884, on certain lots in said city, "government tax" to the amount of $25.97 and "school tax" to the amount of $9.66; total, $35.66; which separation and specification was made pursuant to section 113, chapter 450, acts 1883–4, p. 603.

The coupons tendered as aforesaid are, on their face, made
27 "receivable, at and after maturity, for all taxes, debts, and demands due the State."

On the application of the respondent, Greenhow, treasurer, a writ of error and supersedeas to said judgment was awarded by one of the judges of this court.

The precise question here involved has never before been presented to this court for determination. The decision in Antoni *vs.* Wright, 22 Gratt., 833, though, perhaps, expressed in terms sufficiently broad to have done so, did not, however, embrace it, as the the matter there adjudicated differed from the matter here to be passed upon in that the latter depends upon specific provisions of our State constitution and legislative enactments made in pursuance thereof, whilst the former rests for the most part on general principles. The question here involved, briefly stated, is this: Do the matters set up in the respondent's answer constitute a sufficient defense in law for his refusal to accept the coupons tendered to him by the tax-payer, Vashon, and particularly so much of said coupons as were tendered in payment of such portion of the tax as had been set apart by law for the support of the public free schools of the Commonwealth? And the question thus stated is pregnant
28 with another of vast importance to the people of this Commonwealth, and that is: Are sections 2 and 113 of chapter 450, of the acts of the General Assembly of 1883–4, pp. 561 and 603, constitutional and valid?

Obviously the questions thus presented make it incumbent upon this court to enquire into, though not to pass upon, the constitutionality and validity of the act of the General Assembly of March 30th, 1871, commonly known as the funding bill, and in doing this it becomes necessary to review the doctrine laid down in the majority opinion in Antoni *vs.* Wright, *supra*, decided by this court in 1872. In his opinion in that case Bouldin, J., speaking for the majority of the court, after stating the questions involved, starts out with this remark: "The first and all-essential question is, was there a valid

contract between the State and her bondholders?" The question in Antoni *vs.* Wright arose on the act of March 7th, 1872, which in effect repealed that feature of the funding act of March 30th, 1871, which made coupons "receivable at and after maturity for all taxes, debts, and demands due the State."

Proceeding to answer the question propounded by himself
29 (was there, by virtue of the funding act of 1871, a valid contract between the State and her bondholders?), Judge Bouldin calls attention to the fact that prior to the dismemberment of this State she had contracted a debt which, at the time of the passage of the funding act in 1871, amounted to some $40,000,000 of principal; that during the war, and by an act of violence the State was powerless to resist, about one-third of her territory and population was cut off and formed into the State of West Virginia, and that the State of West Virginia so formed and constituted had been admitted a member of the Federal Union; that both States, in their constitutions and by legislation, had acknowledged their respective liability for a just and equitable proportion of the old debt, and that efforts had been made from time to time to adjust that liability, but that very little progress towards a settlement had been made. In the meantime (says the same judge) the payment of interest on the debt was for a time wholly suspended, and afterwards only partially resumed, by the State of Virginia alone, whilst West Virginia had not, and has not to this day, paid any part of the debt, principal or interest, and the entire debt standing in the name of the State of Virginia and her bonds being held for the whole amount, much anxiety
30 was felt and manifested on the subject as well by the State as by her creditors."

He then proceeds: "Under these circumstances and hopeless of an early settlement with West Virginia the State of Virginia proposed to her creditors, by the act aforesaid of the 30th of M'ch, 1871, a separate adjustment of what she deemed her own indebtedness, which she *assumed* (italics ours) to be two-thirds of the entire debt. Her object, as declared in the preamble to the act, was 'to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by *providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due;*' and her offer was to issue to her creditors new bonds for two-thirds of the entire debt, principal and interest, to run for thirty-four years, with interest payable semi-annually on the aggregate amount of principal and interest, the bonds to be *coupons* or registered, at the option of the creditor, and to be convertible, the one into the other, at like
31 option, and to secure the prompt and certain payment of the interest as the same shall fall due; and to give the *coupons* greater value they were to be 'receivable at and after maturity for all taxes, debts, and demands due the State, which should be so expressed on their face.' As to the remaining third, assumed to be the just proportion of West Virginia, Judge Bouldin refers to the

certificate to be issued therefor by the State of Virginia to all creditors who should accept the times proposed by the State in said act of March 30th, 1871.

"These things Judge Bouldin refers to as matters of history, and from them he deduces the essential elements in every contract — a valuable consideration. That there was no valuable consideration moving from the holders of the State's bonds who accepted the terms thus proposed, not by the State (for her constitution forbade any such proposal), but by the Legislature, without authority to do so, is manifest from the matters of history and the very terms of the act relied on by the learned judge to sustain his conclusion that, as to all those who accepted the terms of the act, it was a valid contract founded on a valuable consideration. In a dissenting opinion of great ability and clearness, delivered in that case, of Staples, J., the
32 want of any benefit to the State from the funding bill of 30th March, 1871, is made so unanswerably clear that 'he who runs may read.'"

He says: "In the present case, if the State will derive any benefit from the funding bill, if that enactment is founded upon a valuable consideration, I am unable to perceive it. It is said that the creditor has released one-third of his debt. I do not so understand it, and I will hazard the assertion—the creditor does not so construe the law. If this was the intention of the framers of the act they have adopted an obscure and equivocal mode of expressing a plain and simple agreement. The creditor surrenders his bond and obtains a new one for two-thirds of his debt and coupons for the interest. For the remaining third the bond is held in trust by the State, and a certificate is given him stating that payment will be provided for in accordance with such settlement as may be made with West Virginia. If that State is faithful to the obligations resting upon her the creditor will receive the other third also. On the other hand, if she repudiates these obligations, there is no agreement or understanding absolving the State from the payment of such
33 third. It is as much bound for the payment of the whole debt as before the passage of the funding bill." (This court has since so held in the case of Higgenbotham *vs.* The Com'w'lth, 25th Gratz, 627.) "I am, therefore, unable to perceive that the State has derived any advantage from the creditor's acceptance of the provisions of the funding act. The contract, if such it be, is wanting in the essential elements of a valuable consideration, so much relied on in the opinion of the Supreme Court of the United States" (referring to Freeman *v.* Nichol.)

It is absolutely impossible to read the terms of the funding bill, and the form of certificate issued thereunder (which is set forth at large in the opinion of Judge Bouldin), and fail to see and be convinced by the unanswerable position taken by Judge Staples in his dissenting opinion.

Nothing ever claimed to rest on the ground of legal and valid contract could well fall further short of its aim than does the funding bill, even when backed up with the creditor's acceptance of its terms. So far from being or proposing a contract, in legal contem

plation, it undertakes to make an unqualified surrender of the
34 right of the State to control her revenues, and this for thirty-four years, regardless of the exigencies and pressing needs of the State that may arise in the meantime.

The funding bill rests solely on *assumptions*. It assumes that by the dismemberment of the State of Virginia she lost one-third of her territory and population, and that West Virginia is therefore bound for one-third of the old debt. The liability thus assumed to rest upon West Virginia has, by that State, been treated (and this, too, is part of history) more as an idle joke, we are sorry to say, than in the spirit of justice and mutual obligation between sister States. Upon the same basis it is *assumed* that this State's proportion of the debt is only two-thirds thereof, and the funding bill proposes, not an exoneration from liability for the other third, but in effect proposes terms—serious terms—for the settlement of the two-thirds and postponement of settlement as to the other third. May the evil day never come to Virginia when that other third shall be demanded under terms so ruinous and humiliating to her people.

In his opinion, Judge Bouldin uses language from which the conclusion would seem necessarily to follow that there is and
35 can be no inviolable contract feature connected with the funding bill. He says: "It is unquestionably true that one Legislature cannot, by an act of ordinary legislation, bind or control in any manner subsequent Legislatures. Such acts of legislation are, and of right should be, always subject to amendment or repeal." But, he contends, it is equally true that by special legislation, amounting to a contract, a subsequent Legislature may be bound; and he cites numerous instances which no one will controvert. The vice, it seems to us, in Judge Bouldin's argument is that it rests upon the unwarranted assumption of a valid contract, when the essential element of a valuable consideration is palpably wanting. But that learned judge concedes it to be unquestionably true that one Legislature cannot, by an act of ordinary legislation, bind or control subsequent Legislatures. This being so, we ask what possible subject belongs more certainly to *ordinary* legislation than the laying of revenue and providing for its collection and how it shall be applied. And is it not obvious that any legislative act which deprives future Legislatures of this all-important right must,
36 in the nature of things, disarm and degrade the State? It would seem that argument ought to be unnecessary to repel an idea so repugnant to all our ideas of legitimate legislative authority.

But to sustain this alleged contract feature of the funding bill authorities are appealed to. Those mostly, if not entirely, relied on are: State of New Jersey *vs.* Wilson, 7 Crouch, 154; Woodruff *vs.* Trapnal, 10 How., U. S., 190, and Freeman *vs.* Nichol, 8 Wall., U. S., 44.

In the first-named case the arrangement claimed to be a contract was a stipulation by the Legislature of the then colony of New Jersey, in a grant of lands to the Indians within the colony, that the lands granted should be forever exempt from taxation. In the

year 1804, more than fifty years after the date of the grant, when the colony had become a State of the American Union, and after the Indians had sold their lands and left the State, an act was passed by the Legislature of New Jersey repealing the exemption clause in the grant, and a question arose between an owner of a portion of these lands and the State of New Jersey as to the validity of the act of repeal.

37 The Supreme Court of the United States held that the grant to the Indians was a valid contract, founded on a valuable consideration, and that the act of repeal impaired the contract and was void.

There the consideration for the contract clearly appeared. The Indians had large claims to lands in the colony of New Jersey; these claims they relinquished and made a deed of cession to the colony, taking in consideration thereof the grant of land aforesaid. No argument can be necessary to shew the wise distinction between that case, when every element essential to a valid contract was present, and the funding bill of 1871, when the essential element of a valuable consideration is, in every sense, absolutely wanting.

The other authorities relied on by the majority in Antoni *vs.* Wright are ably commented on by Judge Staples in his dissenting opinion, and he clearly demonstrates that they do not apply and do not sustain the views of the majority of the court in that case. As to all of them it may here be said also that it is not pretended that there was in the constitution of the States, respectively, in which those controversies arose any provision which the respective legislative provisions conflicted with. Here there are specific

38 constitutional provisions with which the funding bill of 1871 is in conflict. This view will be further elaborated in discussing the precise questions presented by the record in this case.

In connection with what has been already said a further brief review of Antoni *vs.* Wright will demonstrate that the questions here presented are not concluded in and settled by the rulings of this court in that case, nor, indeed, by the subsequent decisions in this court to the same effect, nor by the Virginia coupon cases decided by the Supreme Court of the United States.

The funding bill, with the *coupon* feature attachment, was passed on the 30th of March, 1871. Under that act many bonds were issued with coupons which on their face were made "receivable at and after maturity for *all* taxes, debts, and demands due the State." The General Assembly, however, on the 7th of March, 1872, passed another act prohibiting the officers charged by law with the collection of taxes from receiving in payment anything else than gold and silver coin, U. S. Treasury notes, and notes of the national banks, and repealing all other acts inconsistent therewith. In No-

39 vember, 1872, Antoni *v.* Wright was decided, in which it was held by this court that in issuing these bonds the State entered into a valid contract with all persons taking the coupons to receive them in payment of all taxes and State dues, and that the act of 1872, so far as it conflicted with this contract, was void. The taxes & dues there referred to might *possibly* be construed to mean the

tax as ordinarily levied for the support of the government, and not certain specific taxes which the State constitution specially commanded the Legislature to levy on certain subjects therein particularly designated, and to collect and set apart these and sums derived from other named sources, and apply them exclusively to the support of the public free schools of the State. It is certain that by no other possible construction can the decision be defended as in any sense consistent with the original law of the State, -or can the opinion of the court be held to be in harmony with that decision. Bouldin, J., delivering the majority opinion, on p. 848, after conceding, as before remarked, that in matters of *ordinary* legislation one Legislature cannot bind subsequent Legislatures, and that such acts of legislation are, and of right ought to be, always subject to amendment and repeal, says:

"But it is equally true that by special legislation, amounting to a contract, a subsequent Legislature may be bound. It is bound irrevocably by a legislative grant; by a temporary or perpetual exemption of specific property from taxation; by a bond issued by the State for money loaned, or other sufficient consideration; by charters of incorporation without reservations, and by all *legitimate* legislative contracts." And again, on page 854, in answer to the objection that the contract was repugnant to section 8, article 8, of our State constitution, the same learned judge said: "We think there is no such conflict in the case. The interest on the debt funded may be paid in the mode prescribed, and the constitutional provision in relation to the schools respected and complied with." In reply to this, Staples, J., referring to said section 8, on page 861, said: "The money derived from the sources in that section alluded to is a trust fund, and the Legislature is made a trustee for its inviolable application to the promotion of the cause of education, and that body is absolutely prohibited from appropriating it to any other purpose, as any other trustee is restrained from applying a trust fund to his individual debts. It is said that the obligation to pay the public debt is as strong and sacred under the constitution as that providing for the support of the public schools. That may be so; still it does not follow that revenues dedicated by the constitution to one object exclusively can be applied to another." And on page 862 the same learned judge said: "It can hardly be necessary to adduce argument or authority to shew that no valid contract can be founded on a law which violates the constitution of a State." This palpable truth is conceded in the opinion of the majority of the court, as the contention there is only that a subsequent Legislature is bound by all *legitimate* legislative contracts."

In making these extracts from these clashing opinions the object is, by contrasting them, to bring into clearer light not only their points of disagreement, but also those in which they agree. It is obvious that the majority of the court did not deny the constitutional obligation of the Legislature to provide for the schools, though it did contend that the arrangement made for the payment of the interest on the funded debt constituted a valid contract that

was irrepealable by subsequent legislation, and yet insisted
42 that the arrangement did not conflict with section 8, article 8, doubtless, especially as there had at that time been no law passed levying the specific taxes provided for by that section and setting the revenues therefrom derived apart for and applying the same to the schools.

On page 855 Bouldin, J., says: "The obligation to provide for the interest due by the coupons is as high as the duty of applying the capitation tax and other funds to the schools. Both duties are alike obligatory and both may be discharged, as there is no conflict between them."

At this point it may be interpolated that the State constitution, section 8, article 10, directs the Legislature to provide a sinking fund for the payment of the *principal* of the public debt, but makes no direction as to the payment of the interest, and in that respect differs from the former constitution, whilst its mandate, that the Legislature shall dedicate certain revenues to the schools, is singularly specific; and in view of this difference it is not easy to see how the two obligations can be equal, the one being clearly self-imposed by the legislative contract, and the other being imposed by the
43 constitution.

But returning to the point digressed from, one of the grounds on which the dissenting judge deemed the alleged contract unconstitutional was that the coupons *might* absorb the entire revenue, as well that alluded to in section 8, article 8, as any other, and leave the schools destitute of support. Such apprehension was well founded, as the Legislature had not then taken any steps in obedience to the constitution to discriminate the school taxes from those levied for the support of the government. The revenues were assessed, collected, paid into the treasury of the State, and kept as a whole, without any separation or specification as to how it should be applied, and there was no way of discriminating between those designed for ordinary governmental purposes and those which the Legislature should have set apart for and applied to the support of the public free schools. Under such circumstances, of course, all were more likely to be absorbed by the tax-receivable coupons. This could not have been the case had section 8, article 8, been self-executing. From the nature of things it was not self-executing. It required legislation providing for separate assessments, collections, and application of the school tax; in a word, to render the constitutional provision practically available for the purposes for which it was intended.

44 For some unaccountable reason or from mere inadvertence the Legislature had neglected passing a law carrying out this provision.

In Clark *v.* Tyler, 30 Grattan, 134, where this court decided that fines imposed for violations of law were embraced in the funding act of 1871, and were discharg-able with overdue coupons cut from bonds issued under that act, Staples, J., consistently with his views in Antoni *v.* Wright, again dissented, and in his opinion referred to the fact that fines were still paid into the treasury indiscriminately

with other public dues, and emphatically suggested that the Legislature ought long ago to have passed a law carrying into effect said constitutional provision and setting apart the fine for school purposes, and such continued to be the status when Williamson *v.* Massey, 33 Gratt., 237, was decided in 1880. At length, awakened to a sense of its plain, imperative duty in that regard, the Legislature did, on the 15th of March, 1884, pass the act referred to in the answer of Treasurer Greenhow, the plaintiff in error here (see Acts
45 1883–'4, chap. 453, § 2, p. 561), which reads: "On tracts of lands and lots, and the improvements thereon, not exempt from taxation, there shall be a tax of thirty cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the government, and a further tax of ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of the State." And section 113, p. 603, reads: All taxes assessed on property, real or personal, by this act and dedicated by it to the maintenance of the public free schools of the State, shall be paid and collected only in the lawful money of the United States, and shall be paid into the treasury to the credit of the free-school fund, and shall be used for no other purpose whatsoever; and to this end the auditor of public accounts shall have the books of the commissioners of the revenue prepared with reference to the separate assessment and collection of said school tax, and the several treasurers of the Commonwealth shall have the tax bills in their counties and corporations so made out as to specify the amount of the tax due from each tax-payer to
46 the public free-school fund, including the capitation taxes, of whatever kind or nature, and to keep said capitation tax and school taxes separate and distinct from all other taxes or revenues so collected by him, and forward the same, thus separate and distinct, to the auditor of public accounts, which shall be kept separate and distinct by him from all other taxes or revenues until paid to the public free schools."

Now, the matter set up in the treasurer's answer is sufficient in law to justify his refusal to receive so much of the coupons tendered him by Vashon, the tax-payer and defendant in error here, as was intended as payment of that portion of the tax that was dedicated to the support of the public free schools, provided that said sections 2 and 113 are in accordance with the duty imposed and the authority conferred on the Legislature by said section 8, article 8, of our State constitution.

The simple question, then, is as to the consistency of those sections of the act of the 15th of March, 1884, with the aforesaid provision of the constitution. But that consistency is a thing so plain
47 that there is not the least tendency to obscurity, except by a multiplication of words. It goes without saying; it speaks for itself; it is plain to the naked eye of common sense; there can be no two opinions about it: the enactment of those two sections was not only warranted, but was positively commanded, by that highest authority for legislation, the organic law of the State, section 8 of article 8, which reads: "The General Assembly shall apply the

annual interest on the literary fund, the capitation tax provided for by this constitution for public free school purposes, and an annual tax upon the property of the State of not less than one mill nor more than five mills on the dollar, for the equal benefit of all the people of the State, the number of children between the ages of five and twenty-one years in each public free school district being the basis of such division."

Section 7 of said article 8 prescribes what sources of revenue the Legislature shall set apart as the literary fund; and section 5, article 10, of the constitution authorises the General Assembly to levy a capitation tax not exceeding one dollar on every male citizen twenty-one years or more of age, which shall be applied ex-
48 clusively in aid of the public free schools.

Our constitution, with these provisions in it, was adopted by the people of Virginia on the 6 of July, 1869. We were then undergoing the severe ordeal of reconstruction. Conditions were imposed, one of which was that our restoration, so called, to the sisterhood of States should depend upon the approval by Congress of our constitution. It was adopted by our people, submitted to and approved by the Federal Congress with said provisions in it, and thus we were restored to membership in the Union. Can it be that any power, Federal or State, would permit, much less encourage, its violation? Is it not our most sacred duty to preserve it inviolate? This constitution was in force when the funding act of March 30th, 1871, and when the act of March 15th, 1884, were passed. We have seen that the act of March 15th, 1884, was in terms directed by the constitution. The funding act of 1871 was not in terms so directed, the only constitutional provision for the payment of the public debt being, as before stated, that which directs the creation of a sinking fund for the payment only of the pricipal of the public debt.
49 If the funding act of March 30th, 1871, can by possibility be held constitutional, it can be on no other ground than that it is not in conflict, as this court, in Antoni *v.* Wright, said it was not, with section 8, article 8 of our State constitution, which plainly directs the act of March 15th, 1884, under which this controversy arose. How it is possible to hold that the conflict does not exist between the funding act of 1871 and said section 8 of article 8 of the State constitution we are unable to discover. When the funding act was passed it was the law of this State, the fundamental law, that the specific taxes alluded to in section 8, article 8, of the constitution should be dedicated and set apart for the support of the public free schools, and by a well-established principle such provision was as much a part of the contract arising out of the act and as completely binds the coupon holder as if that law were engraved on the face of every coupon. Haywood *v.* McCracken, 2 How., U. S., 613, and authorities there cited. And the holder takes the coupon, just as a purchaser takes what he buys, subject to all liens and charges of which he had actual or constructive notice.

It is, however, unnecessary to prolong the consideration
50 of these questions. Aside from the question whether the funding act of 1871 is in conflict with the constitution, and

therefore void to the extent that the coupons attached to the bonds issued under that act are made receivable for all taxes, debts, and demands due the State, it is clear that the precise question presented by the record in this case was not before this court in Antoni *v.* Wright, or in any of the similar cases subsequently decided, nor was there any such question before the Supreme Court of the United States in any of the Virginia coupon cases that have been decided by that tribunal. This fact makes the situation much less embarrassing than otherwise it would be, and, in intimating our opinion as to the constitutionality and validity of the funding act of 1871 (but not deciding that question) we have been induced to do so in order to make easy and clear the solution of the question here presented.

We have seen that the act of March 15th, 1884, the act here in question, makes the specific taxes for the support of the schools payable only in the lawful money of the United States, and it has
51 been said (not decided), in Antoni *v.* Greenhow, 107 U. S., 771, that "any act which forbids the receipt of these coupons for taxes is a violation of the contract and void as against the coupon-holders." This, we take it, was merely said as to the general effect of the previous decisions of this court and in the Federal court. The act here under consideration was not in contemplation, for it was not in existence, and that decision must necessarily be limited to the taxes ordinarily levied for the support of government—so limited it does not affect the question here.

We are of opinion that the said act of the 15th of March, 1884, was not only necessary and proper, but was passed in obedience to a positive mandate of the constitution, and is valid, and that the judgment of the hustings court complained of is erroneous and must be reversed.

A true transcript of the record.

Teste: GEO. K. TAYLOR, *C. C.*

STATE OF VIRGINIA, }
City of Richmond, } *To wit:*

52 I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a true transcript of the record and proceedings upon a writ of error lately pending in said court, in which S. C. Greenhow, treasurer of the city of Richmond, was plaintiff in error, and George S. Vashon was defendant in error.

In testimony whereof I have hereto set my hand and annexed the seal of the said court this 18th day of February, 1886.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

GEO. K. TAYLOR, *Clk.*

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of appeals of the State of Virginia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Samuel C. Greenhow, treasurer of the city of Richmond, plaintiff in error in said court, and George S. Vashon, defendant in error in said court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity;
or wherein was drawn in question the construction of a clause
54 of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said George S. Vashon, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 13th day of February, in the year of our Lord one thousand eight hundred and eighty-six.

[Seal United States Circuit Court, Eastern District of Virginia.]

M. F. PLEASANTS,
Clerk of the Circuit Court of the United States,
East. Dist. of Virginia.

Allowed by—
M. R. WAITE,
Chief Justice U. S.

Feb. 13, 1886.

55 VIRGINIA:

In the clerk's office of the supreme court of appeals of Virginia, at Richmond, February 18th, 1886.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within writ is on file in my office.

Given under my hand this 18th day of February, 1886.

GEO. K. TAYLOR, *Clk.*

56 The United States of America to Samuel C. Greenhow, treasurer of the city of Richmond, Virginia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals for the State of Virginia, wherein George S. Vashon is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Watie, Chief Justice of the Supreme Court of the United States, this 13th day of February, in the year of our Lord one thousand eight hundred and eighty-six.

M. R. WAITE,
Chief Justice U. S.

57 On this 16 day of February, in the year of our Lord one thousand eight hundred and eighty-six, personally appeared Wm. L. Royall before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Samuel C. Greenhow, treasurer of the city of Richmond, Virginia, on the 16th day of February, 1886.

WM. L. ROYALL.

Sworn to and subscribed the 16th day of February, A. D. 1886.

WALTER CHRISTIAN, *N. P.*

VIRGINIA:

In the clerk's office of the supreme court of appeals of Virginia, at Richmond, February 18th, 1886.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within citation is on file in my office.

Given under my hand this 18th day of February, 1886.

GEO. K. TAYLOR, *Clerk.*

58 Know all men by these presents that we, William L. Royall and A. B. Gingon, are held and firmly bound unto Samuel C. Greenhow, treasurer of the city of Richmond, Virginia, in the

full and just sum of five hundred dollars, to be paid to the said Greenhow, treasurer, &c., his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals & dated this 13th day of February, in the year of our Lord one thousand eight hundred & eighty-six.

Whereas, lately, at a supreme court of appeals for the State of Virginia, in a suit depending in said court between Sam'l C. Greenhow, treasurer of the city of Richmond, and George S. Vashon, a judgment was rendered against the said Vashon, & the said Vashon having obtained a writ of error & filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Greenhow, treasurer, citing and admonishing him to be & appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Vashon shall prosecute his writ of error to effect and
59 answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else, to remain in full force and virtue.

WM. L. ROYALL. [SEAL.]
A. B. GINGON. [SEAL.]

Sealed & delivered in presence of—

Approved by—

M. R. WAITE,
Chief Justice U. S.

VIRGINIA:

In the clerk's office of the supreme court of appeals of Virginia, at Richmond, February 18th, 1886.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the original bond, of which the foregoing is a copy, is on file in my office.

Given under my hand this 18th day of February, 1886.

GEO. K. TAYLOR, *Clk.*

60 *Assignment of Error.*

SAM'L C. GREENHOW, Treas., &c., *vs.* GEO. S. VASHON.

George S. Vashon assigns for error the action of the supreme court of appeals of the State of Virginia in reversing the judgment of the hustings court of the city of Richmond, and in dismissing his petition and discharging the rule *nisi* that had been awarded thereon.

WM. L. ROYALL,
Att'y for Geo. S. Vashon.

To the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States:

The petition of G. S. Vashon respectfully represents that he is aggrieved by a judgment pronounced against him by the supreme court of appeals of the State of Virginia in a cause pending therein, wherein he was defendant in error and S. C. Greenhow, treasurer of the city of Richmond, Virginia, was plaintiff in error, which said judgment was pronounced and entered on the 19th day of January, 1886. A transcript of the record of said judgment is presented herewith, from which the following will appear to be the material facts:

Your petitioner owed the State of Virginia certain taxes, which he wished to pay with the said State's tax-receivable coupons, under the provisions of her act of Assembly, of Jan'y 14th, 1882, providing for identifying and verifying her said coupons. He tendered
62 to S. C. Greenhow the amount so due by him in current money of the United States, which the said Greenhow received, and at the same time he tendered to him the said State's tax-receivable coupons, which he demanded that the said Greenhow should receive and forward to the hustings court of the city of Richmond for identification and verification according to the terms of the act aforesaid. The amount tendered by your petitioner was for the entire amount owed by your petitioner for that year to the State of Virginia, of which the act of the Virginia Legislature appropriates a certain portion to the maintenance of the public free schools, and the 113th section of the act of March 15, 1884 (Acts 1883–84, p. 603), provides that that part of such tax as is to go to the public free schools shall be paid in money only and not in coupons. Because your petitioner demanded that the said Greenhow should receive his coupons for that part of his taxes appropriated to the schools as well as for all other part- the said Greenhow refused to receive
63 them and forward them to the said hustings court for identification and verification; thereupon your petitioner applied to said hustings court for a writ of mandamus to compel said Greenhow to receive said coupons for identification and verification, which writ said hustings court granted, after hearing and overruling the said treasurer's grounds for refusing to receive them. The said Greenhow thereupon appealed from this judgment to the supreme court of appeals for the State of Virginia, which latter court reversed the judgment of the hustings court and held that petitioner had no right to pay that part of his tax dedicated to the public free schools in coupons.

Briefly stated, the point of the controversy is this: The constitution of the State of Virginia, which was in force when the act providing for the issue of these coupons was passed, provides that — annually apply a certain fund to the maintenance of the public free schools. Those who claim that the coupons cannot be used
64 to pay that part of the revenue appropriated to the free schools contend that if the coupons are to be received for all public dues it may result in a state of facts in which there may be nothing in the treasury but coupons, and the Legislature may be disabled to

fulfil the mandate of the State constitution requiring it to appropriate a certain part of the revenue to the public schools, and that the act providing for issuing tax-receivable coupons is repugnant to the State constitution and void. This argument was pressed upon the Virginia court of appeals in the first case that came before it, Antoni *v.* Wright, 22 Gratt., 833, and pronounced against. See page 854. As fines are dedicated by the State constitution to the public free schools it was again pronounced against by the Virginia court of appeals in the case of Clarke *v.* Tyler, 30th Gratt., 134, and, after having been raised again and fully discuss-d again, it was again overruled by the Virginia court of appeals in the case of Williamson *v.* Massey,
65 33d G-att., 237, see pages 246–247. And now, after these repeated decisions of the highest Virginia court that the funding acts were not contrary to the State constitution because they made their coupons receivable in payment of the school money, the new Virginia court of appeals comes in your petitioner's case and decides that those funding acts are contrary to the State constitution and are null and void, notwithstanding that the Supreme Court of the United States has held in cases too numerous to mention that the decisions before mentioned of the Virginia court of appeals were right, and notwithstanding that it has based its action for ten years upon the proposition that they were right, and it maintains that the act forbidding payment of the school money in coupons is valid, against you petitioner's claim that it is repugnant to the Constitution of the United States.

It is the settled doctrine of the Supreme Court of the United States that in such cases it will follow the first decision of the State court and not the last. Gilpeke *v.* Dubuque, 1 Wall., 176, and many other cases decided since.

Your petitioner, therefore, prays that your honor will award him a writ of error to said judgment.

Petitioner by his attorney:

WM. L. ROYALL.

Endorsed on cover: Virginia sup. ct. of appeals. No. 1268. George S. Vashon, plaintiff in error, *vs.* Samuel C. Greenhow, treasurer of the city of Richmond, Virginia. Filed February 23, 1886.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1889.

No. 23, &c.

THE VIRGINIA COUPON CASES.

(See Acts of Assembly of Virginia, 1870–'71.)

CHAP. 282. An Act to Provide for the Funding and Payment of the Public Debt.

APPROVED MARCH 30, 1871.

Preamble. Whereas in the formation of the State of West Virginia, there were included within its boundaries about one third of the territory and population of the State of Virginia; and whereas, in the ordinance authorizing the organization of said State, it was provided that said State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary; and

whereas the people of this Commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it has been suggested that the authorities of West Virginia may prefer to pay that State's portion of said debt to the holders thereof and not to this State, as the constitution of this State provides:

Now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore

Hereafter no payment of public debt except as hereinafter provided.

1. Be it enacted by the General Assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this State; nor shall any interest be paid upon any part or portion of said debt except as hereinafter provided.

How owners of bonds, &c., may fund the same.

2. The owners of any of the bonds, stocks, or interest certificates heretofore issued by this State, which are recognized by its constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the Old James River Company, and the bonds of the James River and Kanawha Company guaranteed by this State, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred seventy-one, in six per centum coupon or registered bonds of this State, of the

denomination of one hundred, and multiples thereof, dated that day, and to become due and payable in thirty-four years after date, but redeemable at the pleasure of the State, after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer, and the coupons to bearer, at the treasury of the State, and bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues, and demands due the State, which shall be so expressed on their face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by the law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars, or any multiple thereof, shall be exchangeable for bonds of the character herein authorized to be issued; and new certificates of like character may be issued for any fractional sum less than one hundred dollars which may remain in making such exchange.

Bonds issued under this act; how payable, &c.

Coupons; how payable and receivable.

How five per cent. dollar bonds funded.

Fractional sums; how funded, &c.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due, as provided in the last preceding

Certificate for remaining one-third.

section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount, with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and that the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and, *Provided further*, That until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

Condition of such certificate.

Interest on sterling bonds; how paid.

Treasurer to have bonds, certificates, &c., prepared.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved, or lithographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared shall commence the is-

suance of the same as herein provided. The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons, in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and, in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amounts for which certificates shall be issued, under the second and third sections of this act, which calculation shall be endorsed, dated, and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate, to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for

How signed, &c.

Bonds, how numbered.

Certificates, how numbered.

Bonds, &c., to be delivered to second auditor, his calculation, &c.

Registry thereof.

the several amounts, respectively, according to said endorsement.

Bonds and certificates; how delivered, &c.

The second auditor, after making a proper registry of said bond or bonds, and certificates, to be kept in his office, shall deliver the same to the person entitled to them.

Treasurer's registry, &c.

The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate, so surrendered and delivered to him, cancel the same, and endorse thereon the date of such concellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserved in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable.

Sinking fund; how constituted.

5. Whatever sum may be realized from the claims of this State against Selden, Withers and Company, and the Chesapeake and Ohio Canal Company, and from the sale or disposition of the stocks and bonds and debts owned by the State in and against any and all railway and other improvement companies, and all sums which may be realized from the claims of this State against the United States, and from any sales of any real estate now belonging to the Commonwealth, shall be paid into the treasury of the State to the credit of the sinking fund hereby authorized and created.

Amount of taxation for sinking fund.

In the year eighteen hundred and eighty, and annually thereafter, until all the bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hun-

dred dollars of the assessed valuation of all the property, personal, real, and mixed, in the State, which shall be paid into the treasury of the State to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund, to the purchase and redemption of bonds issued by authority of this act.

Commissioners of sinking fund.

6. All necessary expenses incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the treasurer and second auditor, and approved by the Governor.

Expenses in execution of this act; how paid.

7. This act shall be in force from and after its passage.

Commencement.

Office Supreme Court U. S.
FILED,
JAN 23 1889
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

VASHON
vs.
GREENHOW. } *No. 223.*

BRIEF FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

VASHON
vs.
GREENHOW. } *No. 223.*

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The Constitution of Virginia, which was adopted in 1869, contains the following provisions in Article 8, which provides for public free schools:

"Section 7. The General Assembly shall set apart, as a permanent and perpetual literary fund, the present literary funds of the State, the proceeds of all public lands donated by Congress for public school purposes, of all escheated property, of all waste and unappropriated lands, of all property accruing to the State by forfeitures, and *all fines* collected for offences committed against the State, and such other sums as the General Assembly may appropriate.

"Section 8. The General Assembly shall apply the annual interest on the literary fund, the capitation tax provided for by this Constitution for public free-school purposes, and an annual tax upon the property of the State, of not less than one mill nor more than five mills on the dollar, for the equal benefit of all the people of the State."

In March, 1871, while this Constitution was in force, the Legislature passed an act providing for funding the public debt, which authorized the issue of new bonds with interest

coupons attached, which should be receivable in payment of *all* taxes, debts, demands, and dues due the State.

Section 2 of the act provides that "the coupons shall be payable semi-annually, and be receivable at and after maturity for *all* taxes, debts, dues, and demands due the State which shall be so expressed on their face."—*Acts* 1870–'71, p. 379.

Many bonds were at once issued, with these coupons attached: whereupon alarm took possession of the friends of the public schools, lest the whole revenue should come to be paid in coupons, whereby the schools would be unable to receive their appropriations. It was therefore claimed that the funding act was repugnant to the provisions of the State Constitution providing for the public free schools, and therefore void. This question was brought to the test of judicial decision, and the Supreme Court of Appeals of the State decided that the act was not repugnant to the Constitution of the State, and that it was a valid act.—*Antoni* vs. *Wright*, 22 Gratt., 833.

In delivering the opinion of the court, Bouldin, J., says, at page 854, in answer to the argument that the act was void, as conflicting with the provisions of the State Constitution concerning schools:

"But conceding that proposition, it is argued that the contract in this case is void, because it is repugnant to the eighth section of the eighth article and the third section of the tenth article of the State Constitution, dedicating certain portions of the State revenue to the support of free schools. We think there is no such conflict in the case. The interest on the debt funded may be paid in the mode prescribed, and the constitutional provisions in relation to the schools respected and complied with. It only requires that the obligations of succeeding Legislatures shall be firmly met; that there should be what the creation of every new debt imperatively demands—to wit: an increase of taxation if the existing rate be insufficient. The argument is based on the assumption that subsequent Legislatures will fail in their duty, and pursue such a course as may result in a mal-appropriation of the funds referred to; that they will decline to meet faithfully

the high obligation resting on them, and then rely on the irregular consequences of their own default as an argument against the validity of the debt for which they will have failed to provide. The mal-appropriation which would follow would not be the legitimate result of the funding act, but, in effect, would be the act of the Legislature failing to discharge its duty. The obligation to provide for the interest due by these coupons is as high as the duty of applying the capitation tax and other funds to the schools. Both duties are alike obligatory, and both may be discharged, as there is no conflict between them. It is only by a failure to discharge the one that the performance of the other can be put in jeopardy, and it rests with the Legislature, by faithfully and fearlessly meeting both obligations, to preserve the plighted faith of the State and protect her Constitution from violation."

After the case had been decided, the Attorney-General moved for a rehearing of it (ib., 871), when Anderson, J., delivered the opinion of the court refusing the rehearing. At page 874 he said:

"But it is argued that the Legislature had no power, under the Constitution, to authorize a contract to be made binding the State to receive the interest coupons when due in payment of taxes, &c., upon the ground—first, that it is incompatible with other obligations imposed upon the Legislature by the Constitution of the State. And in support thereof, it is said those provisions of the Constitution which set apart certain funds, and a certain proportion of the tax for the public schools, would be defeated by this legislation. It would seem to be a sufficient reply to say that, if it were impracticable to raise a sufficient revenue for both purposes, the latter did not impose an obligation on the Legislature paramount to the obligation to provide for the payment of the interest on the public debt. That was an obligation antecedent and paramount to the Constitution itself, and could not be repudiated by the Constitution, if it had so provided. * * * * *

"But there need be no clashing of duties here. It is only required that the Legislature should levy a tax sufficient for both objects—a duty imposed on it by the Constitution. It

has not been the practice to set apart in the public treasury the identical money received for the public schools; nor is it required by the Constitution or act of Assembly; and the Legislature has discharged its constitutional obligation when it has set apart the required *amount* for that purpose."

This decision was made in 1872.

The Constitution of the State, section 7, Article 8, likewise appropriates all fines to the public free schools.

One Clarke was sentenced to pay a fine and remain in jail until it was paid. He tendered coupons in payment of the fine, which were refused. He applied to the Supreme Court of Appeals of the State for a discharge upon *habeas corpus*. The State resisted the application, upon the ground that in making the coupons receivable for what was appropriated by the Constitution to the public schools the funding act was void. The court pronounced against the State's claim and discharged Clarke.—*Clarke* vs. *Tyler*, 30 Gratt., 134.

At page 141, the court takes up the question, and, after quoting with approbation what has been quoted here from *Antoni* vs. *Wright*, says:

"These views, expressed upon the first hearing and the rehearing of the case of *Antoni* vs. *Wright*, are applicable to the case before us and must govern our decision in this case.

"Much has been said in the case before us about the sacredness of the school fund, and the paramount obligation of the State to educate the people. This is a great and high obligation, and no doubt will be faithfully and firmly met by the Legislature. But, however great and high this obligation, it cannot and ought not to be met at the sacrifice of other obligations equally sacred and other duties equally high and binding. A State, like an individual, must be just before it is generous. No honest man can or will abstract from his creditors what is justly due them, in order to give it to his children. No State, in order to educate its citizens, ought to withhold from its just creditors that which has been pledged by its honor and plighted faith to the payment of its just debts. Both obligations must and will be met. The people must be educated, but they must not be educated at the price

of REPUDIATION AND DISHONOR. Better would be ignorance than enlightenment purchased at such a price."

This decision was made in 1878.

Not satisfied with these two decisions of her own highest court against her claim, the State again, in 1880, brought the same question before the same court in *Williamson* vs. *Massey*, 33 Gratt., 237.

In that case Williamson tendered coupons from bonds issued under the funding act of 1879 (which is in all respects, so far as the coupons are concerned, the same as the act of 1871,) to the Auditor in payment of delinquent taxes due by him. The Auditor refused to receive them; whereupon Williamson applied to the Supreme Court of Appeals for a *mandamus* to compel him to receive them. In answer to a rule which the court made, the Auditor gave the following reason for his refusal, p. 239:

"Because the Constitution of the State and the laws of the State dedicate the aforesaid capitation tax of $1, and one-fifth of the property tax aforesaid, amounting to $1.08, to public schools, and must be collected in money; otherwise the provision of the Constitution respecting the school fund will be defeated."

In passing on this objection the court, by Anderson, J., said, at page 246:

"With regard to the second reason of respondent for his said refusal, the court is of opinion that all the questions raised thereby have been repeatedly decided by this court, and that his refusal to receive the coupons in question, upon that ground, was in conflict with and in disregard of the decisions of the highest judicial tribunal of the State, which is clothed with power by the Constitution of the State, under which he professes to have acted, to interpret the Constitution and to decide all questions arising under it, and whose decisions are final and binding upon the people of the State and all the departments of the State government and its ministerial officers. These questions were raised, argued, and decided in the well-considered case of *Antoni* vs. *Wright*, 22 Gratt., 833, both on the first hearing and on the motion for rehearing.

It is true, I believe, the coupons in those cases were not tendered in payment of the capitation tax. But it was argued that the law was unconstitutional, because by its terms it made the coupons receivable in payment of capitation taxes. But the court decided that it was not unconstitutional on that ground. The same question is raised by respondent in this case, and he justifies his refusal to obey the law upon the ground that one dollar of the taxes against the plaintiff was a capitation tax, which he could not receive coupons in payment of. Yet there was actually tendered in money $1.12, which exceeded the amount of the capitation tax.

"But in the case of *Antoni* vs. *Wright* the coupons were tendered in payment of a property tax, and it was contended that one fifth of the property tax was dedicated to the support of the public schools, and that the requirement that coupons should be receivable in payment of so much of the property tax as was dedicated to the public schools was unconstitutional. So that question was directly in issue, and it was decided by this court that the coupons were receivable in payment of the property tax, and that the act of 1871 was not unconstitutional on that ground.

"The respondent in this case raises precisely the same question, and justifies his refusal to receive the coupons on the ground that the act of the 28th of March, 1879, was unconstitutional in making the coupons receivable in payment of such taxes, in which he virtually undertakes to reverse the decision of the court, to whom the power and duty is assigned by the Constitution, to adjudge the case, and finally to settle and determine whether the law is constitutional or not.

"Some years after the decision of *Antoni* vs. *Wright*, reference was made to that case in the case of *Wise Brothers* vs. *Rogers*, 24 Gratt., 169, when the correctness of that decision was recognized. Again, in the recent case of *Clarke* vs. *Tyler*, 30 Gratt., 134, the same constitutional question was again raised as to the receivability of coupons in payment of fines, which it was argued were appropriated by the Constitution to the public free schools, and that the act of 1871, in making coupons receivable in payment of fines, was a violation of the

Constitution; and this court again reaffirmed its decision in *Antoni* vs. *Wright*, both upon the hearing and on the motion for a rehearing. We are of opinion, therefore, that the question raised by respondent's second reason is no longer an open question. It is *res adjudicata*."

In the case of *Antoni* vs. *Greenhow*, 107 U. S. R., 770, this court used the following language:

"The Supreme Court of Appeals of Virginia decided, at its November term, 1872, in *Antoni* vs. *Wright*, 22 Gratt., 833, that in issuing these bonds the State entered into a valid contract with all persons taking the coupons to receive them in payment of taxes and State dues, and that the act of 1872, so far as it conflicted with this contract, was void. The authority of this case was recognized in *Wise* vs. *Rogers*, 24 *id.*, 169; and in *Clarke* vs. *Tyler*, 30 *id.*, 134–137, decided in 1878, it was said: 'This decision of *Antoni* vs. *Wright* * * * * must be held to be the settled law of the State.' The same questions were decided in the same way here at October term, 1880, in *Greenhow* vs. *Hartman*, 102 U. S., 672, and are no longer open in this court. Any act of the State which forbids the receipt of these coupons for taxes is a violation of the contract, and void as against coupon-holders."

This decision was made in March, 1883.

The constitutional provisions, the statute law, and the decisions of the courts being in this State, on the 15th day of March, 1884, the Legislature of Virginia enacted chapter 450 of the general laws of that session.—*Acts* 1883–'84, p. 561.

The second section of that act reads as follows:

"On tracts of land and lots and the improvements thereon, not exempt from taxation, there shall be a tax of thirty cents on every hundred dollars of the assessed value thereof, the proceeds of which shall be applied to the support of the government, and a further tax of ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of the State."

Section 113 of the same act reads as follows:

"All taxes assessed on property, real or personal, by this act, and by it dedicated to the maintenance of the public free

schools of the State, shall be paid and collected only in lawful money of the United States, and shall be paid into the treasury, to the credit of the free-school fund, and shall be used for no other purpose whatsoever."

In December, 1884, G. S. Vashon offered to pay his property tax to the Treasurer of the city of Richmond, under the provisions of the act of January 14, 1882, set out at large in 107 U. S. R., at page 771, by paying the tax in money and at the same time handing the Treasurer coupons, to be certified to the Hustings Court of the city of Richmond, to be identified and verified according to the provisions of that act. The Treasurer refused to receive the coupons, because the above-quoted statute required that that part of the tax appropriated to the school fund should be paid in money, and not in coupons. Vashon applied to the Hustings Court for a *mandamus* to compel the Treasurer to receive the coupons. A rule being awarded, the Treasurer resisted the application, upon the ground that the act of Assembly forbade him to receive the coupons for the school tax. The Hustings Court held the act void and awarded a peremptory *mandamus*. The Treasurer appealed to the Supreme Court of Appeals, which held the act forbidding the Treasurer to receive the school tax in coupons to be a valid act, upon the ground that the funding act itself was repugnant to the Constitution of the State, in making the coupons receivable in payment of the school tax. This decision was made in January, 1885.

When this decision was made, the terms of office of the judges constituting the Supreme Court of Appeals when the foregoing decisions were made had expired, and the Legislature had elected an entirely new set of judges, as can be seen by looking at the names of the judges constituting the court at the beginning of 76th Virginia Reports and at those constituting it in 77th Virginia Reports. *Vashon* vs. *Greenhow* is reported in 81st Virginia Reports, 336, and by looking at the beginning of the volume it will be seen that the court was composed of an entirely different set of judges from any of those which took part in upholding the constitutionality of the funding act. Indeed, it is matter of public notoriety that

the political party which came into power in Virginia in 1881 did so with the avowed purpose of supplanting the old Court of Appeals, whose term expired then, with new judges, who would declare the funding act contrary to the State Constitution.

ARGUMENT.

The question to be determined is, which will this court follow—the series of decisions of the old court, holding the funding act to be consistent with the Constitution of the State, or the decision of the new court, holding that act to be void, as being in conflict with the Constitution of the State.

If the act is consistent with the Constitution of the State, then the act of March 15, 1884, which forbids payment of part of the tax in coupons, clearly impairs the obligation of the State's contract that they shall be received in payment of ALL taxes due to the State. It is the settled and familiar law of this court that when the question is whether a State law authorizing an issue of bonds is repugnant to the Constitution of that State, and there have been conflicting decisions of the highest court of that State, this court will follow the first decision of that State's court on that question, instead of the last.—*Gelpcke* vs. *Dubuque*, 1 Wall., 175; *Kenosha* vs. *Lamson*, 9 Wall., 477; *Lee County* vs. *Rogers*, 7 Wall., 181; *Havemeyer* vs. *Iowa County*, 3 Wall., 294; *Mitchell* vs. *Burlington*, 4 Wall., 270; *Olcott* vs. *Supervisors*, 16 Wall, 678; *Taylor* vs. *Ypsilanti*, 105 U. S., 60.

It is also the settled and familiar law of this court that when the question to be determined is whether a State statute, making a contract, is repugnant to the Constitution of that State, this court will determine that question for itself, without regard to what the highest court of that State may have decided in regard to it.—*Jefferson Branch Bank* vs. *Skelly*, 1 Black, 436; *University* vs. *People*, 99 U. S., 309; 4 Wall., 177; 14 Wall., 661; 101 U. S., 794.

Now, it is hardly possible for this court, after the many times it has held these coupons to be binding contracts, to

hold now that they are void. I suppose, as a matter of course, that it will adopt the reasoning of Virginia's court in *Antoni* vs. *Wright*, *Clarke* vs. *Tyler*, and *Williamson* vs. *Massey*, *supra*, and I shall therefore discuss the matter no further.

WM. L. ROYALL,
For Plaintiff in Error.

IN THE

Supreme Court of the United States.

GEORGE S. VASHON
vs.
S. C. GREENHOW.
No. 28.

In error to the Supreme Court of Appeals of Virginia.

BRIEF OF R. A. AYERS, ATTORNEY-GENERAL OF VIRGINIA, FOR DEFENDANT IN ERROR.

IN THE

Supreme Court of the United States.

GEORGE S. VASHON
vs.
S. C. GREENHOW. } No. 23.

In error to the Supreme Court of Appeals of Virginia.

BRIEF OF R. A. AYERS, ATTORNEY-GENERAL OF VIRGINIA, FOR DEFENDANT IN ERROR.

STATEMENT.

The only question involved in this case is the constitutionality of the act of the general assembly of Virginia, approved March 15th, 1884, section 113, page 603, of which reads: "All taxes assessed on property, real or personal, by this act, and dedicated by it to the maintenance of the public free schools of the State, shall be paid and collected only in lawful money of the United States, and shall be paid into the treasury to the credit of the free school fund, and shall be used for no other purpose whatsoever; and to this end the auditor of public accounts shall have the books of the commissioners of the revenue prepared with reference to the separate assessment and collection of said school tax, and the several treasurers of the commonwealth shall have the tax bills in their counties or corporations so made out as to specify the amount of the tax due from each tax-

payer to the said public free school fund, including the capitation tax and school taxes, of whatever kind or nature, and to keep said capitation tax and school taxes separate and distinct from all other taxes or revenues so collected by him, and forward the same, thus separate and distinct, to the auditor of public accounts, which shall be kept separate and distinct by him from all other taxes or revenues until paid to the public free schools."

The act was passed by the general assembly pursuant to the requirements of section 8, article 8 of the constitution of Virginia, as follows: "The general assembly shall apply the annual interest on the literary fund, the capitation tax provided for by this constitution for public free school purposes, and an annual tax upon the property of the State of not less than one mill nor more than five mills on the dollar, for the equal benefit of all the people of the State, the number of children between the ages of five and twenty-one years in each public free school district being the basis of such division."

Section 2 of an act of the general assembly passed at the session of 1883–4, (see Acts, page 561), reads as follows: "On tracts of lands and lots, and the improvements thereon, not exempt from taxation, there shall be a tax of thirty cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the government, and a further tax of ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of the State."

The general assembly having carried into effect the constitutional provision by appropriate legislation, the plaintiff in error tendered the defendant, treasurer of the city of Richmond, coupons in payment for a tax bill, of which the sum of $9 66 was set aside for the maintenance of the public free schools. The treasurer, Greenhow, refused to accept coupons in payment for the said $9 66 so set apart, and Vashon applied to the hustings court of the city of Richmond for a mandamus, and upon the hearing a peremptory mandamus commanding Greenhow, treasurer, to receive the coupons tendered in payment for said taxes so set apart was granted.

Greenhow, treasurer, applied to the supreme court of appeals of Virginia for a writ of error, which was granted, and upon the hearing, the judgment of the hustings court of the city of Richmond was reversed, and the case brought here by writ of error to the supreme court of appeals of Virginia.

ARGUMENT.

The contention is that the act requiring the school tax to be collected in money and kept separate from the other revenues of the State is unconstitutional, in that it impairs the obligation of the contract between the State under the funding act of 1871, giving the creditor a coupon receivable for all taxes, debts, dues and demands of the State.

The power to enact both of the acts under examination was derived under the provisions and limitations of the constitution in force at the time of their enactment. When we come to examine the constitutional provisions in force at the time of the passage of the funding bill under which the tax receivable coupons were issued, we find that the only provision referring to the payment of the debt, in force, was section 8 of article 10, as follows: "The general assembly shall provide by law a sinking fund, to be applied solely to the payment and extinguishment of the principal of the State debt; which sinking fund shall be continued until the extinguishment of such State debt; and every law hereafter enacted by the general assembly, creating a debt or authorizing a loan, shall provide a sinking fund for the payment of the same." This only required at the hands of the general assembly that a sinking fund should be provided to be applied solely to the payment and extinguishment of the State debt. Section 8 of article 8 requires the general assembly to apply the annual interest upon the literary fund, the capitation tax and an annual tax of not less than one mill nor more than five mills for educational purposes.

The clause in regard to the debt required the general assembly to provide a sinking fund. The clause in regard to the schools required the general assembly to apply a certain portion of the revenues to the schools. The amount set apart by the general assembly is the minimum required by the constitution, "one mill on the dollar." When the general assembly has therefore only carried into effect by appropriate legislation this mandatory requirement of the constitution in force at the time of the making of the alleged contract, how can it be claimed that this contract has been violated and its obligation impaired? The laws applicable to the case which are in force at the time and place of making a contract enter into and form a part of the contract itself, and this embraces alike all those

laws which effect its validity, construction, discharge and enforcement. (Walker *vs.* Whitehead, 16 Wall., 314–17; Antoni *vs.* Greenhow, 107 U. S., 769; Poindexter *vs.* Greenhow, 114 U. S., 304.)

But it is claimed that the supreme court of appeals of Virginia, in the case of Antoni *vs.* Wright, 22 Gratt., 833, decided this question adversely to the contention of the defendant here, and that under the ruling of this court, where the supreme court of a State has decided one way and subsequently changed its ruling, that the first ruling will be respected where property rights have been acquired thereunder.

Conceding for the sake of argument that this case comes within that principle, which is denied, it is submitted that no such question was raised upon the record or decided in the case of Antoni *vs.* Wright, *supra*. It is true that this question was advanced and strenuously argued by the attorney-general for the State, and discussed by Anderson, J., in his opinion overruling the motion for a re-hearing, but no such question was directly presented by the record or could have been so presented. The general assembly had passed no act carrying the constitutional provision into effect, and there was no mode by which the exact amount required by the constitution to be applied to public free school purposes could be ascertained. This view is clearly sustained by the opinion of Anderson, who said: "But there need be no clashing of duties here. It is only required that the legislature should levy a tax sufficient for both objects; a duty imposed upon it by the constitution." It has not been the practice to set apart in the public treasury the identical money received for the public schools; nor is it required by the constitution *or act of assembly*. (22 Gratt., 875.)

It will be readily seen by an examination of the whole case that this question did not necessarily arise upon the record, and was not regarded either by the counsel or court as necessary to be decided. The principle that the authority of a case is limited to the decision of questions raised in the record, is too well settled for discussion. This principle was sharply applied to the case of Osborn *vs.* The Bank in the decision of In Re Ayers, 123 U. S., 443, and the famous case was shorn of much apparent authority with which the *obiter dictum* of Chief Justice Marshall had clothed it. The opinion of the learned judge of the supreme court in this case carefully examines and reviews the case of Antoni *vs.* Wright, supra, and says that "it is clear that the precise question presented by the record in this case was not

before this court in Antoni *vs.* Wright, or in any of the similar cases subsequently decided, nor was there any such question before the supreme court of the United States in any of the Virginia coupon cases that have been decided by that tribunal. * * * It has been said (not decided) in Antoni *vs.* Greenhow, 107 U. S., 771, that any act which forbids the receipt of these coupons for taxes is a violation of the contract and void against the coupon holders. This we take it was merely said as to the general effect of the previous decision of this court and in the federal courts. The act here under consideration was not in contemplation, for it was not in existence, and that decision must necessarily be limited to the taxes ordinarily levied for the support of government—so limited it does not affect the question here."

In the case of Carroll *vs.* The Lessee of Carroll, 16th How., 275, the court said: "And therefore this court and other courts organized under the common law has never held itself bound by any part of an opinion, in any case, which was not needful to the ascertainment of the right or title in question between the parties. In Cohens *vs.* The State of Virginia, 6 Wheat., 399, this court was much pressed with some portion of its opinion in the case of Marbury *vs.* Madison. And Mr. Chief Justice Marshall said: "It is a maxim not to be disregarded that general impressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent; other principles which may serve to illustrate it are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." The cases of Ex parte Christy, 3 How., 292, and Jenness et al. *vs.* Peck, 7 How., 612, are an illustration of the rule that any opinion given here or elsewhere cannot be relied on as a binding authority, unless the case called for its expression. Its weight of reason must depend on what it contains.

The leading cases to maintain the principle that the first and not the latest decision will be followed where there have been conflicting decisions by the supreme court of a State are: Gilpcke *vs.* Dubuque, 1st. Wall., 175, and Taylor *vs.* Ypsilanti, 105 U. S., 60. The principle does not apply here, because the question presented for decision

is not the same, and for the additional reason that the rights claimed vested before and not under the decision under examination. But, however this may be, the question presented for decision here was not presented in Antoni *vs.* Wright, supra. This appears from an examination of the case, as fully set forth in the opinion of Richardson, judge. Decisions of State courts on the construction of their own constitutions and statutes, if settled by their highest court, will be followed in this court. (Luther *vs.* Borden, 7 How., 1; Nesmith *vs.* Sheldon, 7 How., 812; Webster *vs.* Cooper, 14 How., 488; Randall *vs.* Brigham, 7 Wall., 523; Township of Elmwood *vs.* Marcy, 92 U. S., 289; Town of St. Attawa *vs.* Perkins, 94 U. S., 260; Fairfield *vs.* Gallatin county, 100 U. S., 47; Post *vs.* Supervisors, 105 U. S., 667.)

Judgment of highest State court that a statute of its State is constitutional under its constitution is conclusive upon this court. (Gut *vs.* Minnesota, 9 Wall., 35; R. R. Co. *vs.* Georgia, 98 U. S. 359.) The State court held the act under examination to be constitutional, because it was passed in obedience to a mandatory clause of the constitution in force at the time the funding bill was passed, which provision of the constitution must have entered into and formed a part of the contract under which the creditor received his security, the power being reserved to the general assembly to carry out the provisions by appropriate legislation. (Butcher's Union *vs.* Crescent City, &c., 111 U. S., 746.) This is a decision of the State court in the construction of its own constitution, which does not deny the creditor any contract right, but only enforces, by proper legislation, a constitutional requirement superior to any obligation to receive his interest coupons for taxes. Du Pont v. Davis, 10 How. 218.

R. A. AYERS,
Attorney-general of Virginia.

J. RANDOLPH TUCKER.
For defendant in error.

Office Supreme Court U. S.
FILED.
JAN 20 1890
JAMES H. MCKENNEY
CLERK

Supreme Court of United States.

No. 23.

VIRGINIA CASES.

ADDITIONAL BRIEF FOR THE STATE OF VIRGINIA, BY J. R. TUCKER, OF COUNSEL.

VASHON VS. GREENHOW.

An additional view to those presented in the Brief on file in this case is proper to be taken.

This case does not involve a question of Virginia's impairing the obligation of her contract—but the question is did she make a valid contract, *quoad* the school tax? Could she make a valid contract to appropriate the tax for support of schools to the interest on her debt?

This law simply provides that the amount due by Vashon for school tax shall not be paid or set off by his claim for interest on State debt, or in other words, shall not be appropriated to State debt, and diverted from the schools.

Such a contract if enforced is a breach of an express trust created by the State Constitution.

18. In Paup vs Drew 18 How 218, where a State had made such a contract to receive bank notes for her debts, it was held they were not receivable against an express legislative trust to receive the debt in question in specie.

In Butcher's Co., vs Crescent city, III. U. S. 746, it was held a State could not contract to barter away its duty to protect health &c. Such a contract being *ultra vires* never created any obligation, and hence no obligation of such a contract could be impaired by its violation. If the implied power to protect health avoids a contract by the State in derogation of

hat power, why does not on express duty imposed by the Constitution avoid a contract which violates that duty? Can the State in mockery impose on Vashon a tax for the school, and then allow him to retain it to pay the interest on her debt to him evidenced by coupon? Her contract to receive coupons is not binding as to this tax, required by the Constitution to be paid in money. As to this tax, the contract was void and created no obligation, because *ultra vires*.

In Antoni vs. Wright, 22 Grattan, no separate school tax had been laid. No trust for the schools was defined by law, and, therefore, there was no trust to which the Constitution could attach its mandate. The act of 1883-4 did and thus for first time the tax was separate, and was ordered to be paid into the treasury to credit of school fund, and to be used for no other purpose. See language of Constitution and law cited in Record p. 2.

The fine could not be set apart for the schools, because it is a part of the principal of the Literay Fund, *the interest* of which only is to be applied to the support of schools.

By law now, therefore, each tax-payer segregates his school tax and pays it into the Treasury in trust for schools. This law is *commanded* by Constitution as a trust duty. If tax-payer pays and State receives a coupon for this tax, he pays and she receives nothing for schools, and the State is made to commit a breach of trust, which the tax-payer *insists* upon here in this Court. Will he be heard so to do? Will the Court help him in this demand? Or will it not condemn him for his false, illegal and unconstitutional effort to compel a trustee to violate a trust for his benefit?

A promise to pay gold abrogates the promisor's right to tender coupons. Bronson vs. Rodes 7 Wall. 227. This tax-payer Vashon, as a party to the Constitution, has agreed to pay this school tax in money. *He is estopped* to tender it in coupons.

McGAHEY VS. STATE OF VIRGINIA.

Mr. Royal in his Brief insists, that Virginia must be presumed have intended to be bound by a Coupon with certain

marks, as being *prima facie* genuine. In this statement he concedes that a coupon without any marks is not *prima facie* genuine. If not, then the genuineness must be proved as any other fact is.

Again. He insists that the law of Virginia requiring an affidavit to be filed with a plea denying handwriting appplied to the State of Virginia.

1st. It cannot apply to the State. It applies to persons in its terms.

2nd. It applies to handwriting of parties, not to a Lithograph. Code § 3279.

3rd. It was intended to put the party denying to the Conscientious test. This is inapplicable to the State.

4th. But the law, under which this procedure is had, does not require it. It was competent for Virginia to change the former law by that of May 12, 1887. *In re* Ayers 123. U. S., at p. 505, citing Beers vs. Arkansas 20 How. 527. R. R. Co., vs. Tennessee 101. U. S. 337.

But it is insisted by the argument *ab inconvenienti*, that Virginia ought to be bound by these produced coupons. The inconvenience to the holder may be great, not to be able to establish his claim without proof; but what ruin to a State to be bound by all the coupons, which may be forged against her, unless she proves the negative, that she never executed them. The nexus between the State and each coupon must be proved.

But the act excluding expert evidence it is insisted is unconstitutional, because it changes the law as to such evidence as it existed when the coupon contract was made in 1871.

I reply:—

1st. There was no statute law in Virginia at that date as to such evidence at all. The only possible Case-law on the subject might be that of the British Courts see Mudd vs Suckermore, 5 Adol, and Ell 703, and as stated by this Court in Moore vs. U. S. 91 U. S. 270. See also Strothers vs. Lucas 6 Peters 767, Rogers vs Ritter 12 Wall. 317. M. and S. P. R. R. Co., vs. Kellog 94 U. S. 467 and in Virginia, Rowt vs. Kile 1, Leigh 216. Burress Case 27 Grat 946. 82 Virginia 1. The rule is this—where another paper is in evidence for another purpose, whose genuineness is proved or admitted, a comparison of handwriting is allowed to a jury, and sometimes to experts.

That rule has no application to this case, for the coupon was never signed in anybody's handwriting, and an expert could neither prove the genuineness of the produced coupon by his knowledge of handwriting, nor by comparison with any other admittedly genuine paper, for there was never such in the case.

2. But I take higher grounds.

I insist that expert evidence under the rule can have no application to a *Lithographic* signature.

Such a signature never had any nexus with the hand of promisor. He never signed any of them. A stranger to the promise, an unconscious machine signed all. Of course all signed by machine (as these were) must be *alike*. It needs no expert to prove this, it is conceded. But likeness does not tend to prove—much less does not establish the genuineness of any.

The genuineness of a *manual* signature is established by characteristic marks as clear and reliable as those in respect to the lineaments of the human face. Likeness, perfect and complete, is in such a case rather evidence against than for genuineness of the alleged signature, according to expert science. In the very unlikeness, the expert perceives the unconscious personality of the writer, while in the perfect resemblance he detects the hand of the forger, painfully copying by art, what nature is careless about doing. The genuine signature is spontaneous, unconscious, and unconstrained. The forgery is painfully imitative of what the forger's hand could never naturally do. The expert can discern the true writer under a feigned dissimilarity, as readily as he can detect the forger under his unnatural imitation; just, as the grimace of the mimic differs from the distortion of the real face to the eye of the expert detective. To the real expert, truth cannot be dissembled, nor untruth feigned.

Now the science of the expert is in his analytic discernment of the characteristic features of the handwriting, as of the human face. The inimitable unconsciousness of action the dissembler can never acquire. *Nullum simile est idem.* When the expert is asked, is the alleged paper genuine, he answers

from memory of the writer's action in signing his name, or from recollection of his genuine signature, or by comparison with a conceded signature, in each case, by reference to the characteristics of a genuine act of the promisor, that he finds the same in the alleged one. But in every such case, therefore, *there must be a paper between which and the promisor* there is the established *nexus* of actor *and deed*. He did *that*, therefore, says the expert, he must have done *this*.

But suppose he did not do *that*, how can the expert decide that he did *this*, because of the likeness between *this* and *that*. Both are done by the lithograph machine—neither by Virginia. The likeness of one to the other proves the *machine* is bound for both, but no one else.

What then can establish the obligation of Virginia for the coupon?

1. A witness who can prove that though she nor her officer signed it, he delivered it by her authority or 2, That the coupon was attached once, and detached afterwards from a bond signed by her officer, by her authority.

There is no place for expert evidence in such a class of cases.

The first requisite makes the *nexus* between Virginia and the coupon depend on a *fact extrinsic* to the coupon itself, that is, that she by her officer acknowledged and delivered it. That extrinsic fact is a matter for proof by a witness who saw it, but cannot be detected or ascertained by expert testimony.

I insist, therefore, that the exclusion of expert testimony by the act of the Virginia legislature was superrogatory. Such evidence was inadmissable on general principles because irrelevant, and incapable of proving, and not tending to prove the question at issue; viz: Did Virginia authorize the issue of that coupon? not is it like some she did authorize.

This is the reason we find no cases of expert evidence as to lithographed Bonds. There is no one of them actually executed by the promisor, to which as a *standard* of admitted genuineness, we may refer the disputed paper.

It may be said, that these coupons were on such paper

and producing the bond, wherein is the obligation of the coupon? For Judge Joynes says: "But *the contract for the payment of interest is in the bond*, which ascertains and defines the terms of that contract." p 771-2. If the validity of coupon is denied, how can it be proved but by producing the bond in which is "the contract for the payment of interest?" That bond was executed—the coupon never was. Produce the paper with Va.'s *fac tum*, in which is to be found the coupon contract.

The case just cited was a case in which the State was sought to be bound by judgment as guarantor. The definition of coupon in that case was the law for such contracts, and inhered in the law of 1871, creating these very coupons. The act of § 412 of the code. now complained of, is in accord with the law declared in Ayers vs. C. W. *Supra*. How can it be unconstitutional?

2. But if wrong in this, Virginia has right to require this production without its imposing the obligation of her contract She may regulate procedure against herself, and require the production of the bond. She may allow the proceeding, or condition it, or withdraw the allowance. Beers vs. Arkansas, 20 How, 527—cited and approved *in re* Ayers 123 U. S. 505.

BRYAN VS. C. W. of Va.
COOPER VS. C. W. of Va.

These cases, if the Federal questions were raised, have been fully covered by the discussion of McGahey vs. C. W.

But the Federal questions were not raised. The Court simply excluded the evidence on the ground "that sufficient ground was not laid for secondary evidence." Therefore these cases must be dismissed or affirmed for following reasons:

1st. Judicial action may impair contract obligation, but is without remedy. A *law* must impair it to come within the judicial remedy of this Court, Knox vs. Bank 12 Wall,379.

2nd. The record must show clearly that the decision *rode down* the constitution of the U. S. Spies vs Illinois 123. U. S. 131.

3rd. Exceptions are taken to instruction of court, that there was no evidence to prove genuiness. These cannot avail, for first, there was none, and second, it does not raise a Federal question, even if there was.

These views are supplemental to and not substitutes for the briefs already on file.

J. RANDOLPH TUCKER,
OF COUNSEL FOR VIRGINIA.

Jan. 16, 1890.